United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED APR - 1 1959
Joseph W. Stewart

No. 14,872

MILLROSE CORPORATION,

Appellant,

v.

CALVIN P. BRENT, et al.,

Appellees.

No. 14,873

466

MILLROSE CORPORATION,

Appellant,

v.

BARBARA E. HICKS,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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STATEMENT OF QUESTIONS PRESENTED

I

Is a maker of a promissory note estopped from alleging fraud in the execution thereof when she signed said promissory note in blank after being advised to do so by her daughter upon whom she relied for advice?

II

When the signer of a promissory note signs the note in blank upon the advice of her daughter whose counsel the maker sought, placing in circulation a negotiable instrument which came into the hands of a purchaser for value without notice of any infirmities, can they defend on the ground of fraud and misrepresentation when said note comes into the hands of a third party?

III

Is the intention of the maker of a promissory note a prerequisite to the validity of the note and in the absence of such intention can the rights of a holder in due course be defeated when the signing of the note relates to the transaction at hand?

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

An appeal from a final judgment of the United States District Court for the District of Columbia cancelling promissory notes and holding void deeds of trust signed by the appellees.

The jurisdiction of this Court is invoked under the provisions of Section 1291, Title 28, U. S. Code.

STATEMENT OF CASE (BRENT)

The appellees, Calvin and Sarah Brent filed suit to cancel a deed of trust and accompanying promissory note. They alleged in their Complaint and pre-trial statement approved by the Court that they entered into a contract with Consolidated Engineering and Distributing Company for the repair of their home; that the contract called for the payment of $3000.00 and they alleged that at no time did they sign any other instruments relating to their property. They further stated that their signatures to the deed of trust and deed of trust note were obtained by fraud and misrepresentation in that appellees understood that they were signing only a contract and it was so represented to them; that the signing of the deed of trust and promissory note was obtained through misrepresentation on the part of Consolidated Engineering & Distributing Company. Appellees asserted in their pre-trial statement that appellant, Millrose,was not the holder in due course in that it purchased deed of trust and installment note with full knowledge of the arrangements, (Emphasis supplied), between appellees and Consolidated; that Millrose was a party to the arrangements and scheme to secure the execution of the instruments. Appellant, Millrose, asserted that it was holder in due course, having purchased said note and deed of trust in good faith and without any knowledge of the transaction that occurred between Consolidated and the appellees. The appellees admitted their signatures on the note, deed of trust and contract.

At the trial of the Brent case, they were of little aid to the factual situation other than stating that in February, 1955, they did have an occasion to talk with an agent of the Consolidated Engineering and Distributing Company about repairs to their home; the agent was named Robinson; that said agent appeared at the home of the appellees, Brent,

and discussed the various repairs to be done to their home when they signed a contract. They testified that he obtained their signatures on only one occasion but they do not remember signing deed of trust and deed of trust installment note; they admitted that they had every opportunity to read all the papers presented to them; that nothing was concealed from them and nothing prevented them from reading or examining the various instruments. There was no mention whatsoever in the appellees' version of the testimony of the conversation with Robinson relative to deed of trust or deed of trust installment note. Appellee Calvin Brent testified that he could read and write and understood generally the things he reads and had no trouble recognizing or reading the promissory note at the trial. He further testified that the same was true when he examined the deed of trust together with his wife at the office of the Recorder of Deeds in the District of Columbia. He admitted that he knew the import of the statement "we promise to pay"; and that he was able to read and understand at the trial with the same degree as in 1955. The essence of his testimony surrounding the signing of any other instruments, other than the contract was that "I couldn't remember", signing any other paper. The following colloquy appeared on pages 150 & 151 of the Transcript of Testimony:

"BY MR. BERNSTEIN:

Q. Can you read that?

THE COURT: Do you see anything on there that says it is a promissory note? Do you see any printing on there that says it is a promissory note?

THE WITNESS: No, I don't.

BY MR. BERNSTEIN:

Q. Can you read the note? A. I imagine I can read some of it here.

Q. Suppose you read what you can. A. "For value received, we promise to pay on or before 120 . . ."--

Q. What did you say after "value received"? A. "We promise . . ."

Q. Go ahead. A. ". . . to pay on or before 120 days..."

Q. We promise to pay--you know what that means; don't you? A. We promise to pay?

Q. Yes. A. If I owe you, I promise--that is, if I signed that, I promised to pay it.

Q. You were able to read that just as well in 1955 as you are today; weren't you? A. If I had seen that.

Q. If you had seen it? A. If I had seen it, yes.

* * * *

Q. Knowing your signature is on this note, don't you know you signed other papers either then or on some other occasion? A. I could have. I was getting ready to go to the hospital.

* * * *

Q. In other words, if you did sign your name a second or third time on that occasion, you have no present memory of it; is that correct? A. That is correct.

Q. And you don't remember any other circumstances surrounding it; is that correct? A. Other than Mr. Robinson coming to the house to get me to sign the contract to put the water and heat in my house.

Q. If you did sign a second or third paper on that occasion, you have no memory of the details of your signing it or what was said with respect to your signing it; is that correct? A. That is correct.

Q. Did you read this top sheet that was on top of this pink sheet before you signed? A. I was reading it. Mr. Robinson kept talking, as I say. He talked about the baby; talked about my father. He just kept talking the whole time he was there.

Q. Did you read it? A. I tried to read it, yes.

Q. Did Mr. Robinson make any effort to stop you from reading any of the papers you signed or had to do with that day? A. That I can remember, no.

Q. He didn't do anything to stop you from reading it? A. As far as I can remember it, he didn't."

* * * *

Robinson, the agent of Consolidated and a witness on behalf of the appellees testified that he obtained their signatures on the note and deed of trust and contract at the same time and advised them that the deed of trust and installment note would be used for interim financing purposes and that the appellees freely and voluntarily signed these forms, he answering all questions asked of them. He further stated to the Court that he did not cover up or conceal or divert their attention in any way while they were signing the instruments in question. The evidence further disclosed that contract was signed in pencil while the deed of trust and installment note were signed in ink. At the trial it was stipulated between counsel for the parties hereto that the promissory note was delivered by the Consolidated Engineering and Distributing Company to the Bank of Silver Spring, Maryland, on February 14, 1955 and the Bank drew against the account of Millrose the sum of $2520.00, which was paid to the Consolidated Engineering and Distributing Company and that the note from that date to the present was held and had been held by the appellant, Millrose.

The trial Court ruled at the conclusion of the case that the forms used by Consolidated without full explanation of its contents was likely to deceive persons of the intelligence, business experience and education of the appellees and was not likely to indicate to such persons that they were signing a blank promissory note and deed of trust; that the appellees did not understand that they were making a note and deed of trust and that there was no other person available whom the appellees could call upon to read the papers that they signed. The trial Court found further that the appellees were not negligent and that the deed of trust and promissory notes were procured by fraud in the execution and, because appellees lacked intent to make the notes and were not guilty of negligence in so doing, cancelled the notes, giving judgment for appellees.

STATEMENT OF CASE (HICKS)

Appellee sued for cancellation of promissory note signed by her, payable to the order of the defendant Consolidated Engineering and Distributing Company, Inc., which note at the trial of the cause and at the time of the filing of the suit was admittedly in the possession of the defendant, Millrose Corporation. The appellee stipulated in both cases that the Millrose Corporation was the holder of the note [leaving the issue of whether or not the Millrose Corporation was a holder in due course to the trial Judge for determination]. Without objections and by way of stipulations the records of the Bank of Silver Spring, Silver Spring, Maryland, were admitted into evidence to show that Millrose Corporation paid by check (which was numbered) to the Consolidated Engineering and Distributing Company, Inc., the sum certain for the notes in question which dates corresponded with the recordation of the deeds of trust and occurred within a day after the signing of the deeds of trust and accompanying installment notes by the plaintiffs herein. No testimony was introduced or sought to be introduced to show that the defendant, Millrose Corporation, in any way had any knowledge of the arrangements between the maker and payee on the note nor was any testimony produced to show that the defendant, Millrose Corporation, had any knowledge or was notified prior to the purchase of the notes of any claim of fraud. (Emphasis supplied). The appellant, Millrose Corporation asserted that it was a holder in due course of the deed of trust installment note in the amount of $2450.00 and that it purchased said note in good faith without any knowledge of the defenses or claims the appellee might have against Consolidated Engineering and Distributing Company.

Appellee Hicks in her pre-trial statement (which counsel stipulated that he would abide by) alleged that her signature to the promissory note and deed of trust in question was obtained by fraud and misrepresentation which consisted of her understanding that they were

signing only a contract when in fact they signed in addition thereto a deed of trust and deed of trust installment note. Appellee further alleges in her pre-trial statement that the signing of the deed of trust and installment note was without her knowledge and the signing of a deed of trust and deed of trust installment note was procured by fraud and misrepresentation, consisting of statements on behalf of the defendant, Consolidated Engineering & Distributing Company's agent to the effect that said instrument was in fact a contract. It was stipulated that the Appellee's signatures were genuine as they appeared on the contract and promissory note.

The Appellee Hicks testified that she had a fourth grade education and for her protection when she entered into the business arrrangement in question arranged for her two daughters to be present and advise her upon the signing of these papers. She admitted signing the contract and admitted her signatures and that she asked her daughters to read the contract to her.

The Appellee's daughter, Julia Robinson, was called as a witness in her mother's behalf, testified that her mother had her there for her protection and that she read the contract to her mother and advised her mother to sign it, and that her mother signed another paper which the daughter advised the mother <u>that it was O. K. for her to sign it</u> (Emphasis supplied). The said Julia Robinson testified that she did see the sheet of paper that her mother signed and that it was a blank sheet in a pamphlet-like form. She testified that there was nothing to prevent her from having read the papers that her mother signed as she advised her mother that it was alright to sign the papers in blank. The Appellee's final witness was Lester Robinson who procured Appellee's signature and stated that he advised the Appellee that she was signing instruments which would be a lien on her property. He stated that he volunteered the information to the appellee, stating that "it would become a lien on her property and would be used for the purpose of interim financing; that the permanent financing was to be obtained when the job was completed".

Appellant and appellee stipulated at the conclusion of the case that appellee, Hicks, signed the promissory note in the amount of $2450.00, which note was presented to the Bank of Silver Spring, Maryland; that a net amount of $2058.00 was paid by the Millrose Corporation for the note out of the bank account of the Millrose Corporation, which account was in the Bank of Silver Spring, Maryland. That the note in question was dated February 15, 1955, and recorded in the Office of the Recorder of Deeds on February 16, 1955, and purchased by Millrose Corporation on February 16, 1955.

The trial Court found that the appellee was not negligent in signing the blank note and deed of trust and concluded as a matter of law that the promissory note signed by the appellee, dated February 15, 1955, payable to the order of Consolidated Engineering and Distributing Company, in the amount of $2450.00 was procured by fraud in the execution and that the said note was void and unenforceable by appellant and ordered cancellation thereof.

STATEMENT OF POINTS

I

When maker of a promissory note signs same in blank (after being advised by daughter) which note is completed in accordance with the terms of an executory contract and sold to a third party without notice, then maker cannot allege fraud in execution and misrepresentation as to third party.

II

When maker of promissory note knowingly signs same in blank causing said instrument to be placed in circulation and is purchased by a third party, maker is then estopped to allege fraud in the execution thereof.

III

When the maker of a promissory note signs in blank along with other instruments relating to a business transaction, the maker can not defeat the rights of the holder in due course on the ground that he did not intend to sign the instrument.

SUMMARY OF ARGUMENT

The fundamental theory behind the law merchant and the Negotiable Instruments Law relating to the protection of holders in due course must be adhered to in this case and can not be defeated by unfortunate events that happen to literate persons who fail to protect themselves. A mere statement that I did not intend the consequence of my act can not be used to defeat the rights of a holder in due course. The findings that the makers were free from negligence can only stem from the fact that they did not intend to sign the promissory notes in blank and in the Hicks case, the daughter was there for the purpose of examining the instruments but failed to do so.

If this rule of law be allowed to stand it would reverse all prior decisions and leave the entire business world with the responsibility of proving mental processes when they sue on a promissory note as holders in due course. Mature and intelligent people are responsible for the natural and probable consequences of their acts and the decision of the lower Court would place a premium on lack of inertia, lack of desire and carelessness. It is therefore respectfully submitted that the decision of the lower Court be reversed.

ARGUMENT

I

WHEN THE MAKER OF A PROMISSORY NOTE SIGNS IN BLANK, WHICH INSTRUMENT IS THEN COMPLETED IN ACCORDANCE WITH THE TERMS OF AN EXECUTORY CONTRACT AND SOLD TO A THIRD PARTY WITHOUT NOTICE, MAKER THEN CAN NOT ALLEGE FRAUD IN THE EXECUTION AND MISREPRESENTATION AS A DEFENSE IN ANY ACTION BY A HOLDER IN DUE COURSE ON THE NOTE.

The testimony which is not in dispute reveals that the appellee, Barbara E. Hicks, signed an executory contract for repairs to her home and at the same time a deed of trust and deed of trust installment note. Testimony further shows that the mother, appellee herein, one week prior to the signing of the instruments refused to sign on that occasion, preferring to wait until she had the aid, assistance and advice of her daughter. The daughter testified on the occasion of the signing of the instruments in question that she read the contract to her mother who signed same and at the same time her mother was requested to sign an instrument in blank which she acquiesced in her mother's doing. The daughter further testified that the paper her mother signed was in pamphlet form; that nothing prevented the daughter from reading the paper, and that she "just didn't bother to read it." (Emphasis supplied). The trial Court found as a fact that the appellee did not understand that she was signing a blank note and deed of trust; did not intend to sign the note and was not negligent in signing the blank note and deed of trust, and ordered the cancellation of the note.

The appellees, Brent, admitted their signatures on the contract, deed of trust and deed of trust installment note but stated that they did not remember signing the deed of trust or deed of trust installment note; that no effort was made to conceal any papers, or facts from them.

No evidence was offered to attempt to show that the appellant had notice of any defect in the title of the appellee or had notice of any infirmity in the note or was in any way acquainted with such facts; no evidence was offered to show bad faith on behalf of the appellant to show any such facts to taint the appellant's acceptance of this negotiable instrument. Further, no evidence was offered to show that the appellant had any knowledge that the consideration for the promissory note was an executory contract. In other words, the trial Court seemed to take the position that the burden of proof was on the appellant to show conclusively that advice and information were given to the maker of the note. The trial Court further took the position that when a daughter advises the mother to sign instruments in blank and the instruments come into the hands of a third party the mother is not negligent in so signing and that the rights of a third party could be defeated under the circumstances.

The trial Court made no finding upon the issue of a holder in due course and it would therefore be safe to assume that the Court took the position the fraud in the execution and lack of intent on the part of the appellees to make a note would be sufficient to defeat the rights of a holder in due course.

At the outset the legal question involved is whether or not an executory contract is adequate consideration for a promissory note. Consideration for a negotiable instrument is always presumed (Section 28, Title 201, D.C. Code).

In the event the maker defends on the ground of lack of consideration it must be established that the holder had notice of the inadequacy, lack of, or failure of consideration before acquiring the note in order to defeat his status of holder in due course. U. S. v. Shaeffer, (Md., 1940) 33 F. Supp. 547; Black v. First National Bank (1903) 96 Md. 399, 54 A. 88; Home Credit Co. v. Fouch (1928) 155 Md. 384, 142 A. 515; and Brewer v. Slater (1901) 18 App. D.C. 48.

Was appellant, Millrose, a holder in due course? Title 28-402 D. C. Code (1951) and Section 52 of the Negotiable Instruments Law provides:

> "that a holder in due course is one who takes the instrument under the following conditions: (1) that it is complete and regular on its face; (2) that he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact; (3) that he took it in good faith and for value; and (4) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

Applying the above legal principles to the facts herein, we find that the appellant was a holder in due course. Appellant was not an immediate party to the transaction but received the note from Consolidated; furthermore, appellee did not attempt to show privity or agency between Consolidated and appellant by which fraud may be imputed to it.

No question was raised at the hearing herein on behalf of the appellees concerning the acquisition and circumstances of the acquisition of the note by the appellant. It was stipulated between the parties hereto that the note was complete and regular on its face when deposited in the Bank of Silver Spring by Consolidated. The record herein shows that the amount of the promissory note corresponds with the amount entered in the contract for the performance of the work. As a matter of fact, in the Brent case, the contract specifically provided for the payment of $3000.00 in the form of a promissory note, to be paid in monthly installments and secured by a deed of trust on the real estate of the parties.

The law is well settled that where a person signs his name to a blank piece of paper, or leaves unfilled blanks in a negotiable instrument, and entrusts that paper to another, the latter is held to have the authority to fill it out in accordance with the instructions given. However, if he fails to do so, the person who signed the blank or incomplete note and placed such paper in circulation is responsible for it. Burrows

v. Klunk (1889) 70 Md. 461, 17 A. 378; Linthicum v. Bagby (1917) 131 Md. 648, 102 A. 997; The Concordia Lutheran Evangelical Church v. The U. S. Casualty Co. (D. C., 1955) 115 A. 2d 307; Frank v. Lilienfeld, (1880) 33 Grat. 377; Howell v. Commercial Nat. Bank (1913), 40 App. D. C. 370.

Therefore, it can safely be said that in the instant cases where the makers of these notes signed same in blank and could read, write and understand the nature and consequences of their actions, made no effort for full and further explanation, they are therefore bound by the consequences of their actions by having placed such paper in circulation.

The rights of a holder in due course can not thereby be defeated by such inaction.

II

WHEN THE MAKERS OF PROMISSORY NOTES KNOWINGLY SIGN INSTRUMENTS IN BLANK CAUSING THEM TO BE IN NEGOTIATION AND ARE PURCHASED BY A THIRD PARTY (A HOLDER IN DUE COURSE) THEY ARE THEN ESTOPPED TO ALLEGE FRAUD.

In both the Brent and Hicks cases we find that they were literate and could understand the nature and consequences of their actions. Their main contention being that they did not read the instruments that they signed and did not know they were signing a deed of trust and deed of trust installment note. The Rule in this jurisdiction is well settled that where literate and reasonably intelligent people sign a note but fail to read it, they are negligent and are estopped from raising question of fraud against a holder in due course. Thompson v. Franklin Nat. Bank, 45 App. D. C. 218, certiorari denied, 37 S. Ct. 21, 242 U. S. 637, 61 L. Ed. 540; Zier v. Eastern Acceptance Corporation, D. C. Mun. App., 61 A. 2d 106, 76 W. L. R. 1026; Columbia Federal Savings and Loan Ass'n. v. Johnnie W. Jackson, 131 A. 2d 404; C. I. T. Corporation v. Panac, 25

Cal. 2d 547, 154 P. 2d 710, 160 A. L. R. 1285; Branz v. Stanley, 142 Me. 318, 51 A. 2d 192; Williston on Contracts, Rev. Ed., § 95 A, 1488; Beutel's Brannan, Negotiable Instruments Law (7th ed.) § 55, p. 758-762; Britton, Bills and Notes (1943 ed.), § 130.

In both the Brent and Hicks cases the parties knew and testified clearly to the fact that they were entering into contracts for the repair or renovation of their homes; that they had signed certain instruments to purchase their homes and had a general knowledge of the business surrounding home ownership. They do not allege nor did they attempt to prove any concealment on the part of Consolidated but were content to state: (1) In the Hicks case, that they did not sign a deed of trust or deed of trust installment note although they could read and write, had representative there to affirm the legality of the transaction and just did not take the time to read it. (2) In the Brent case - just didn't know they had signed a deed of installment note, had every opportunity to read what they had signed, and knew the import of the words - we promise to pay. It would appear to the appellant that under the circumstances the makers had every opportunity to protect themselves and in failing to do so, were negligent and therefore estopped from raising the issue of fraud.

III

WHEN THE MAKER OF A NEGOTIABLE INSTRUMENT SIGNS SAID INSTRUMENT IN BLANK ALONG WITH OTHER DOCUMENTS RELATING TO SAID INSTRUMENT WITH OPPORTUNITY TO READ AND ABILITY TO UNDERSTAND, CAUSING SAME TO BE NEGOTIATED, HIS NEGLIGENCE IN SO DOING ESTOPS HIM FROM ALLEGING LACK OF INTENTION TO SIGN SAME.

The case at bar does not lend itself to one in evaluating conflicting testimony but was decided solely on the testimony of the appellees, which testimony unquestionably shows that they signed in blank promissory notes which were presented together with the contract

for home improvements. The evidence clearly shows that the contracts for home improvement and the signing of the negotiable instruments took place at the same time while the parties thereto had every opportunity to inquire, discover and understand what they were signing.

The testimony of the appellees on this point is negative in that their only explanation for signing, in one instance (Hicks case) - the appellee's daughter thought it was alright for her mother to sign in blank; (Brent case) - "I just don't remember signing it, although I had every opportunity to read it".

Examining the four corners of the record herein we do not find the slightest intimation that the appellees signed the deed of trust and deed of trust installment note upon the advice that they were signing something other than what they were, or that the instruments were signed to be held for a specific purpose and misappropriated. The only thing we can find in the record is this negative approach - I didn't know that I signed it. The question to be answered therefore is can the rights of a holder in due course be defeated by literate people who refuse to protect themselves by alleging I didn't intend to sign this instrument?

At the outset counsel is aware of the fact that findings of fact shall not be set aside unless clearly erroneous; however, this rule of law must be weighed and balanced with the established principle of law that fraud must be proved by clear and convincing evidence. However, the language in the case of Tucker v. Meredith, 232 F. 2d 347, 350, 351, seems to answer the problem when the Court said:

> "* * * It is, of course, true that the maker of a negotiable instrument may suffer hardship because he is unable to assert against a holder in due course valid defenses he might have against the payee or any subsequent holder not a holder in due course. The possibility of that consequence should be envisaged by one who executed negotiable paper. It is a consequence he may suffer, however, whether or not he anticipated it; for the law regards the security of negotiable instruments in the hands of holders who

> took for value before maturity without notice of infirmities or defects as of far greater importance than the preservation of the defenses of those who executed them." (Emphasis supplied.)

The Court found as a fact in both cases that the makers of the notes did not intend to sign the instruments and, of course, you will find that to be factually true in almost all of the cases raising the problem of signing negotiable instruments in blank. In the case of Tucker v. Meredith, supra, the parties thereto did not intend to sign a $9500.00 deed of trust; in the Columbia Federal Savings & Loan Ass'n. v. Johnnie W. Jackson, 131 A2 404 and in Zier v. Eastern Acceptance Corp., supra, the parties did not intend the consequences of their action but the Court in each case said that a maker of a note is estopped to raise a question of fraud against the holder in due course if literate and has reasonable opportunity to read the instrument and fails to so do. Any other conclusion would defeat the principles of the Negotiable Instruments Law. It is respectfully requested that the decision of the Lower Court be reversed.

Respectfully submitted,

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JOINT APPENDIX

[Filed 11/3/55]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVIN P. BRENT and
SARAH C. BRENT, his wife
5119 E Street, S. E.
Washington, D. C.

Plaintiffs

vs.

CONSOLIDATED ENGINEERING AND
DISTRIBUTING COMPANY OF
AMERICA, INC., a corporation
400 H Street, N. E.
Washington, D. C.

JACOB SANDLER
Tower Building
Washington, D. C.

LUCIEN HILMER
1025 Connecticut Avenue, N. W.,
Washington, D. C.

MILLROSE CORPORATION,
a corporation
350 Fifth Avenue, suite #7212
New York, New York

Defendants

Civil Action No. 4871-55

COMPLAINT TO CANCEL FORGED AND FRAUDULENT DEED OF TRUST CONVEYING REAL PROPERTY AND TO CANCEL FORGED AND FRAUDULENT PROMISSORY NOTE AND FOR OTHER RELIEF

The plaintiffs aver to this Honorable Court as follows:

1. Jurisdiction of this cause is vested in this Honorable Court by virtue of the provisions of Title 11 sections 305 and 306 of the District of Columbia Code, 1951.

2. Plaintiffs are citizens of the United States and are residents of the District of Columbia. They sue in their own right as owners of real estate situate in this District, the title to which has been encumbered and clouded by a certain deed of trust purporting to convey said property. Defendant Consolidated Engineering and Distributing Company

of America, Inc. is a corporation organized and existing under and by virtue of the laws of the state of Delaware and has done business in this District since December 20, 1954. Said defendant is sued in its own right as the party secured by the terms of said purported deed of trust. Defendants Jacob Sandler and Lucien Hilmer are sued as trustees under said deed of trust. Defendant Millrose Corporation is a body corporate and plaintiffs are informed that its principal place of business is in New York, N. Y. It is named a defendant herein as the reported indorsee of a certain promissory note purportedly made to the order of Consolidated Engineering and Distributing Company of America, Inc. by plaintiffs and which is secured by said deed of trust. Defendant Consolidated Engineering and Distributing Company of America, Inc. is hereinafter designated as defendant "Consolidated".

3. Plaintiffs are owners of real estate located in this District which is designated for purposes of assessment and taxation as lot 6 in square 5316 and which is improved by premises number 5119 E Street, S.E. On February 5, 1955 plaintiffs were approached by one L. J. Robinson who represented himself to plaintiffs as being an agent for defendant Consolidated, and as a result of representations made to plaintiffs by said Robinson, plaintiffs made their contract with defendant Consolidated on said date by the terms of which plaintiffs agreed to pay Consolidated three thousand dollars ($3,000.00) for certain home improvements to be done by Consolidated, said sum to be paid in instalments upon completion of the designated work. At that time nor at any other time whatsoever did plaintiffs sign any other instrument relating to their said property to which defendant Consolidated was interested. Nonetheless there appears among the land records for this District in Liber 10366 at folio 581 as instrument number 5423, a deed of trust dated February 14, 1955 which purports to convey plaintiffs' said real property by plaintiffs to defendants Jacob Sandler and Lucien Hilmer as trustees to secure defendant Consolidated in the payment of a purported promissory note said to have been made by plaintiffs to the order of defendant Consolidated payable on or before 120 days from February 14, 1955. Plaintiffs aver that the signatures appearing on said purported

deed of trust are not those of plaintiffs but are forgeries and that if in fact such a promissory note as is described in said deed of trust does exist, that it was not made by plaintiffs but that the signatures thereon are likewise forgeries.

4. Defendants Sandler and Hilmer, trustees under said purported deed of trust, are empowered by the terms of such instrument to sell said property upon default of the alleged grantors in the payment of the aforesaid purported promissory note. Inasmuch as no work as called for in the above mentioned contract has been done to plaintiffs' home and because said note and deed of trust are forgeries and are fraudulent and because plaintiffs had no knowledge of the existence of such instruments until August 2, 1955, plaintiffs have made no payments on said note which by its terms is now due and payable. Consequently plaintiffs are apprehensive that said trustees may cause their said property to be sold by virtue of their powers accorded by said purported deed of trust, if called upon to do so by the holder of the above described promissory note secured by said deed of trust.

5. Said deed of trust recites in part that plaintiffs appeared personally before one Louise Green, a notary public in and for this District, on February 14, 1955 and that plaintiffs acknowledged said instrument to be their act and deed. However, plaintiffs have never seen or heard of said Louise Green and they did not at any time execute such instrument or any other instrument before such person and they never acknowledged to said person or to any other person that said deed of trust was their act and deed.

6. Plaintiffs are informed, believe and therefore aver that defendant Consolidated has indorsed and negotiated the aforementioned instrument purporting to be the promissory note of plaintiffs to defendant Millrose Corporation. Plaintiffs therefore name said party as defendant herein as the holder of a forged and fraudulent note.

WHEREFORE, the premises considered,plaintiffs pray:

1. That process issue from this Honorable Court directed to defendants requiring them to appear and answer the exigencies of this complaint; that substitute service be had if need be.

2. That a preliminary injunction issue enjoining defendants from foreclosing under or by virtue of the aforesaid forged and fraudulent deed of trust and from exercising any purported right, authority, right, duty or remedy as may be provided for by the terms of said deed of trust.

3. That a perpetual injunction issue preventing defendants from foreclosing under or by virtue of said forged and fraudulent deed of trust and from exercising any purported right, authority, duty or remedy as may be provided for by the terms of said deed of trust.

4. That this Honorable Court adjudge said deed of trust and promissory notes to be void and of no effect and that each of said instruments be cancelled, vacated, held for naught and that they be expunged from the land records of this District.

5. That punative or exemplary damages in the amount of ten thousand dollars ($10, 000. 00) be awarded plaintiffs and that a reasonable attorney's fee be awarded plaintiffs besides their costs.

6. For such other and further relief as to the Court may seem meet and proper.

/s/ Calvin P. Brent
/s/ Sarah C. Brent

[Verification]

[JURAT dated Oct. 10, 1955.]

/s/ S. Churchill Elmore
Attorney for Plaintiffs
Colorado Building

[Filed 11/29/55]

ANSWER AND COUNTERCLAIM OF DEFENDANT MILLROSE CORPORATION TO PLAINTIFFS' COMPLAINT

Comes now the defendant, Millrose Corporation, by and through its attorneys, for and in answer to the plaintiffs' complaint, and states as follows:

1. That it neither admits nor denies the allegations contained in paragraphs 1 and 2 of the plaintiffs' complaint, inasmuch as they are merely averments of pleading and not material to the issues raised herein.

2. The defendant, Millrose Corporation, admits that portion of paragraph 3 of the plaintiffs' complaint herein, which alleges the existence of the property and the amount of the installment note herein and that it appears as a matter of record with designated trustees as alleged, but denies the remaining allegations contained therein.

3. The defendant, Millrose Corporation, admits the allegations contained in paragraph 4 of the plaintiffs' complaint which relates to the power of the trustees under said deed of trust and denies the remaining allegations contained therein.

4. The defendant is without information sufficient to form an answer to the allegations contained in paragraph 5 of the plaintiffs' complaint and verily denies same and respectfully refers this Honorable Court to the counterclaim filed herein.

5. The defendant admits that the promissory note in question was purchased from the Consolidated Engineering and Distributing Company of America, Inc., but denies the remaining allegations contained in paragraph 6 of the plaintiffs' complaint.

6. That all allegations not heretofore denied are herein specifically denied.

WHEREFORE, having fully answered plaintiffs' complaint, the defendant prays that it be dismissed.

COUNTERCLAIM AGAINST PLAINTIFFS

The Millrose Corporation, Inc., by way of counterclaim against the plaintiffs, Calvin P. and Sarah C. Brent, states that on February 14, 1955, they purchased in due course from the Consolidated Engineering and Distributing Company of America, Inc., a deed of trust and its accompanying installment note which was signed by Calvin P. and Sarah C. Brent, the plaintiffs herein, securing said Consolidated Engineering and Distributing Company of America, Inc., naming Jacob Sandler and

Lucien Hilmer as trustees, and recorded in the Office of the Recorder of Deeds for the District of Columbia in Liber 10366 at Folio 581, Instrument No. 5423. That by virtue of said purchase, the counter-claimant alleges that he is a holder in due course of the aforedescribed note which is now in default. Said note was dated February 14, 1955 in the amount of $3,000.00, at 6%, all due and payable in one hundred twenty (120) days.

That the said plaintiffs have failed and refused to make any payments thereon and there is due and owing the full principal balance of $3,000.00, with interest at the rate of 6% from February 14, 1955.

WHEREFORE, the premises considered, the defendant-counter-claimant prays:

1. That the plaintiffs' complaint be dismissed with costs.

2. That the defendant-counterclaimant have judgment against the said Calvin P. and Sarah C. Brent in the amount of $3,000.00 plus interest, court costs and attorneys fee, as provided in said note.

3. For such other and further relief as to this Honorable Court might seem just and proper.

NEWMEYER AND BRESS

By: /s/ Sheldon E. Bernstein

/s/ George B. Parks
Attorneys for Millrose Corp., Inc.
730 Fifth Street, N.W.
Washington 1, D. C.

[Certificate of Mailing]

[Filed Dec. 5, 1955]

ANSWER TO COUNTERCLAIM OF DEFENDANT MILLROSE CORPORATION

Come now the Plaintiffs, by and through their attorney, and for answer to the counterclaim of defendant Millrose Corporation say as follows:

1. As stated in their complaint herein plaintiffs deny that they signed the deed of trust and note referred to in the counterclaim but that said instruments are forgeries and are of no legal effect.

2. Plaintiffs deny that defendant Millrose Corporation is a holder in due course of said promissory note but that said defendant took said instrument with knowledge of fraud upon the plaintiffs.

3. Plaintiffs deny that they are indebted in any respect to said defendant.

WHEREFORE, plaintiffs pray that they be granted judgment in accordance with the prayers of their complaint and that said counterclaim be dismissed.

/s/ S. Churchill Elmore
Attorney for plaintiffs

* * *

[Certificate of Mailing]

[Filed April 8, 1957]

PRETRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE: April 8, 1957

This is a suit to cancel deed of trust and promissory note.

Contract was entered into between P and D Consolidated for repairs to home in the sum of $3,000.00. P alleges that their signature to the note and deed of trust were obtained by fraud and misrepresentation, that pltfs. understood that they were signing only a contract and it was so represented to them and that they signed the note and deed of trust without knowledge in fact that they were such instruments and because of the misrepresentations of the D Consolidated. Pltf. alleges no work was done; pltf. asserts that D Millrose is not a holder in due course of the note and trust deed and purchased the same with full knowledge of the arrangements between P and D Consolidated and that D Millrose was a party to an arrangement and scheme with D Consolidated to secure the execution of the note trust deed. Pltf. further ~~sustains~~ maintains that because there was fraud in the execution of the note and trust deed that the contract was void ab initio.

D Millrose asserts it is a holder in due course, purchased the note and deed of trust in good faith without any knowledge of any defenses Ps. may have against D Consolidated and paid full value for said note and deed of trust and counterclaims for judgment in the amount of $3,000. plus interest.

D Consolidated denies that there was any fraud or misrepresentation in the execution of the note or deed of trust and alleges that Ps signed said note and deed of trust with full knowledge of what the instruments were. D concedes that work was not done but alleges that the reason for it was that a condition precedent D Consolidated concedes that no work was done but asserts that work was not to start until sewer and water lines were laid and that had not been done. The D Consolidated asserts that D Millrose is not a holder in due course and alleges that a reserve fund was set up to take care of such contingencies as reflected in Ps complaint and that D Millrose has failed to apply said reserve fund to the settlement of Ps claim.

Signatures on note, deed of trust and contract are admitted. Admitted that when contract was entered into it was understood that the District would run the lines but that the District has not done so. Admitted that the District issued plumbing permits for this work.

Pltf. seeks also punitive damages and attorney's fees.

Dated April 8, 1957

/s/ Luther W. Youngdahl
Pretrial Judge

* * *

[Filed November 3, 1955]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BARBARA E. HICKS
5220 E Street, S. E.
Washington, D. C.

Plaintiff

vs.

CONSOLIDATED ENGINEERING AND DISTRIBUTING COMPANY OF AMERICA, INC., a corporation
c/o John Alexander, attorney
Woodward Building
Washington, D. C.

JACOB SANDLER
Tower Building
Washington, D. C.

LUCIEN HILMER
1025 Connecticut Avenue, N. W.
Washington, D. C.

MILLROSE CORPORATION
A Corporation
350 Fifth Avenue - Suite #7212
New York, New York

Defendants

Civil Action No. 4873-55

COMPLAINT TO CANCEL FORGED AND FRAUDULENT DEED OF TRUST CONVEYING REAL PROPERTY AND TO CANCEL FORGED AND FRAUDULENT PROMISSORY NOTE AND FOR OTHER RELIEF

The plaintiff avers as follows:

1. Jurisdiction of this Honorable Court is invoked under and by virtue of the provisions of Title 11 sections 305 and 306 of the District of Columbia Code, 1951.

2. Plaintiff is a citizen of the United States and a resident of the District of Columbia. She sues in her own right as owner of real estate situate in this District, the title to which has been encumbered of record by a certain deed of trust purporting to convey said property. Defendant Consolidated Engineering and Distributing Company of America, referred to hereinbelow as defendant "Consolidated", is a corporation organized and existing under the laws of the state of Delaware and has qualified to

do business in this District. It is sued in its own right as the party secured by the terms of said forged deed of trust. Defendants Jacob Sandler and Lucien Hilmer are sued as trustees named by said deed of trust. Defendant Millrose Corporation is a body corporate having its principal place of business in New York, N. Y., so plaintiff is informed, and it is sued in its own right as the party reported to plaintiff as indorsee of the forged promissory note secured by said deed of trust.

3. Plaintiff is owner of real estate situate in this District known for purposes of assessment and taxation as lots 28 and 29 in square 5316 improved by premises number 5220 E Street, S. E. On February 12, 1955, after being approached by one L. J. Robinson, an agent for defendant Consolidated, plaintiff executed her contract with said defendant by the terms of which plaintiff agreed to pay in installments the sum of $2450.00 to said defendant upon completion by said defendant of certain home improvements to said real estate. Plaintiff signed no other instruments of any nature whatsoever dealing with her said property. Nonetheless, there appears among the land records of this District in liber 10368 at folio 481, instrument number 5827, a purported deed of trust dated February 15, 1955 by which plaintiff purportedly conveyed her said real estate to defendants Sandler and Hilmer as trustees to secure defendant Consolidated in the payment of a recited promissory note alleged to have been made by plaintiff to the order of Consolidated in the sum of $2450.00 payable within 120 days after date which was February 15, 1955. Plaintiff states that she did in fact not sign said deed of trust or said promissory note and after a personal examination of the photostatic record of said deed by her daughter, plaintiff further states that said deed of trust is a forgery and is fraudulent. Plaintiff also avers that if said promissory note is a reality that it too is fraudulent and is a forgery. Said deed of trust among other things that plaintiff on February 15, 1955 personally appeared before one Louise Green, a notary public in and for this District, and acknowledged to said notary public that said deed was her act and deed. The fact is that plaintiff has never seen or heard of such a person as Louise Green and that plaintiff did not on February 15, 1955 or any other time personally appear before said person and acknowledge said deed of trust as her act and deed.

4. Plaintiff has paid nothing on account of said promissory note although by the terms thereof it is past due and payable. Defendant Consolidated has begun but has abandoned the work to be done to plaintiff's home under the terms of the aforesaid contract and her home has been left in a torn up and upset condition.

5. Said deed of trust by its terms provides among other things that defendants Sandler and Hilmer as trustees are empowered to sell plaintiff's home upon her default in the payment of said note which is now overdue and plaintiff is apprehensive that said trustees may exercise their authority by virtue of said purported deed. Said deed of trust has caused a serious cloud on plaintiff's title and prevents her from dealing with her title freely. Accordingly plaintiff seeks the assistance of this Court in remedying the harm done her through the aforesaid forgery of her signature to said deed of trust and promissory note.

WHEREFORE, the premises considered, plaintiff prays:

1. That process issue from this Honorable Court requiring defendants to appear and answer the exigencies of this complaint and that substitute service be had where necessary.

2. That a preliminary injunction issue and that a permanent injunction issue preventing defendants from foreclosing under or by virtue of the aforesaid forged and fraudulent deed of trust and from exercising any purported authority, right, duty or remedy as may be provided for therein.

3. That this Honorable Court adjudge said deed of trust and promissory note to be void and of no effect and that each of said instruments be cancelled, vacated and held for naught.

4. That punative or exemplary damages be awarded plaintiff in the sum of $10,000.00 and that a reasonable attorney's fee be awarded plaintiff besides her costs.

5. For such other and further relief as to the Court may seem just and proper.

/s/ Barbara E. Hicks

/s/ S. Churchill Elmore
Attorney for Plaintiff

[Verification]

[JURAT dated Oct. 11, 1955.]

[Filed November 29, 1955]

ANSWER AND COUNTERCLAIM OF DEFENDANT MILLROSE CORPORATION TO PLAINTIFF'S COMPLAINT

Comes now the defendant, Millrose Corporation, by and through its attorneys, for and in answer to the plaintiff's complaint, and states as follows:

1. That it neither admits nor denies the allegations contained in paragraphs 1 and 2 of the plaintiff's complaint, inasmuch as they are merely averments of pleading immaterial to the issues raised herein.

2. That the defendant is without knowledge or information sufficient to form an answer to the allegations contained in paragraphs 3 and 4 of the plaintiff's complaint and for reasons therefore respectfully refers this Honorable Court to the counterclaim herein, but for the purpose of pleading, denies the allegations contained in paragraphs 3 and 4.

3. Defendant admits that the deed of trust referred to in said complaint, gives the trustees authority to sell the property involved herein and that said deed of trust is a lien on the plaintiff's property title, but has no information concerning the alleged forgery of said deed of trust and promissory note and for the purpose of pleading herein, denies same and respectfully refers this Honorable Court to the counterclaim filed herein.

4. That all allegations no heretofore denied are herein specifically denied.

WHEREFORE, having fully answered plaintiff's complaint, the defendant prays that it be dismissed.

COUNTERCLAIM AGAINST BARBARA E. HICKS

The Millrose Corporation, Inc., by way of counterclaim against the plaintiff, Barbara E. Hicks, states that on February 16, 1955, she purchased in due course from the Consolidated Engineering and Distributing Company of America, Inc., a deed of trust and its accompanying installment note which was signed by Barbara E. Hicks, the plaintiff herein, securing said Consolidated Engineering and Distributing Company of America, Inc., naming Jacob Sandler and Lucien Hilmer as

trustees, and recorded in the Office of the Recorder of Deeds for the District of Columbia in Liber 10368 at Folio 481, Instrument No. 5827. That by virtue of said purchase, the counterclaimant alleges that he is a holder in due course of the aforedescribed note which is now in default. Said note was dated February 15, 1955 in the amount of $2,450.00, at 6%, all due and payable in one hundred twenty (120) days.

That the said plaintiff has failed and refused to make any payments thereon and there is due and owing the full principal balance of $2,450.00 with interest at the rate of 6% from February 16, 1955.

WHEREFORE, the premises considered, the defendant-counterclaimant prays:

1. That the plaintiff's complaint be dismissed with costs.

2. That the defendant-counterclaimant have judgment against the said Barbara E. Hicks in the amount of $2,450.00, plus interest court costs and attorney's fee as provided in said note.

3. For such other and further relief as to this Honorable Court might seem just and proper.

NEWMEYER AND BRESS

By /s/ Sheldon E. Bernstein

/s/ George B. Parks
Attorneys for Millrose Corp., Inc.

* * *

[Certificate of Mailing]

[Filed December 5, 1955]

ANSWER TO COUNTERCLAIM OF DEFENDANT MILLROSE CORPORATION

Comes now the plaintiff by and through her attorney, and for answer to the counterclaim of defendant Millrose Corporation, says as follows:

1. As stated in her complaint herein plaintiff denies that she signed the deed of trust and note referred to in the counterclaim but that said instruments are forgeries and are of no legal effect.

2. Plaintiff denies that defendant Millrose Corporation is a holder in due course of said promissory note but that said defendant took said instrument with knowledge of fraud upon the plaintiff.

3. Plaintiff denies that she is indebted in any respect to said defendant.

WHEREFORE, plaintiff prays that she be granted judgment in accordance with the prayers of her complaint and that said counterclaim be dismissed.

/s/ S. Churchill Elmore
Attorney for plaintiff

* * *

[Certificate of Service]

[Filed April 8, 1957]

PRETRIAL PROCEEDINGS

April 8, 1957

STATEMENT OF NATURE OF CASE:

Suit to cancel deed of trust and promissory note.

Contract between P and D Consolidated provided for repairs in the sum of 2,450.00. P alleges that their signature/s/ to note and deed of trust was obtained by fraud and misrepresentation, that P understood that she was signing only a contract and it was so represented to her and that she signed the note and deed of trust without knowledge in fact that they were such instruments and because of the misrepresentation of D Consolidated. P asserts that the work was started but not completed. P also asserts that D Millrose is not a holder in due course and deed of trust and purchased same with full knowledge of the arrangements between P and D Consolidated and D Millrose was a part to an arrangement and scheme with D Consolidated to secure the execution of the note and deed of trust. P maintains that because there was fraud in the execution of the note and deed of trust that said instruments were void ab initio. D Millrose asserts that it is a Holder in Due Course, purchased the note and deed of trust in good faith without any knowledge of any defenses P may have against D Consolidated, and paid value for said note and deed

of trust. Counterclaims in the sum of $2,450.00 plus interest.

D. Consolidated denies that there was any fraud or misrepresentation in the execution of the note or deed of trust and alleges that P signed said note and deed of trust with full knowledge of what the instruments were. D Consolidated further alleges that it performed all the work that could be done until the District of Columbia laid the lines which was a condition precedent under the contract. D Consolidated asserts that D Millrose is not a holder in due course and alleges that a reserve fund was set up to take care of such contingencies as reflected in P's complaint. D Millrose has failed to apply said reserve fund to the settlement of P's claim. P seeks also punitive damages and attorney's fees.

Signatures on note, deed of trust and contract are admitted. Admitted that when contract was entered into it was understood that District would run the lines but that District has not done so. Admitted that the District issued plumbing permits for this work.

Dated April 8, , 19 57

Luther W. Youngdahl
Pretrial Judge.

* * *

[Filed December 10, 1958]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BARBARA E. HICKS, Plaintiff v. CONSOLIDATED ENGINEERING AND DISTRIBUTING COMPANY OF AMERICA, INC., JACOB SANDLER, LUCIEN HILMER, MILLROSE CORPORATION, Defendants.	Civil Action No. 4873-55
CALVIN P. BRENT AND SARAH C. BRENT, Plaintiffs v. CONSOLIDATED ENGINEERING AND DISTRIBUTING COMPANY OF AMERICA, INC., JACOB SANDLER, LUCIEN HILMER, MILLROSE CORPORATION, Defendants.	Civil Action No. 4871-55

Washington, D. C.
May 26, 1958

The above-entitled causes came on for hearing before the HONORABLE BURNITA SHELTON MATTHEWS, United States District Judge, at 10:15 o'clock a.m.

* * * *

OPENING STATEMENT ON BEHALF OF PLAINTIFF HICKS

MR. ELMORE: Plaintiff Barbara Hicks, if the Court please, asks substantially for cancelation of a certain deed of trust and a certain deed of trust note which were allegedly executed on February 12 of the year 1955. The note having been in the amount of $2,450, and the deed of trust which was secured by the note was ultimately recorded among the records of this District in Liber 10368, at Folio 481, by which the plaintiff here purported to have conveyed her property known

as Lot 29 in Square 5316 to the defendant's trustees to secure Defendant Consolidated in the payment of such note. The terms of that note call for a payment within 120 days from the date thereof.

The plaintiff will seek to show Your Honor that she executed a contract with the Defendant Consolidated for the improvement of her house, for which she would pay the afore-stated sum. However, upon completion of the work--further, that the work was never completed.

THE COURT: Was there any work done?

MR. ELMORE: There was a certain amount of work done, yes, Your Honor.

Finally, plaintiff will attempt to show Your Honor that she never knew nor intended that such a note or deed of trust was signed by her.

* * * *

6 MR. ELMORE: * * * That will conclude this plaintiff's opening statement.

MR. PARKS: Your Honor, at this point, I would like to move for judgment, for directed verdict, based on his opening statement, because his opening statement, in my opinion, under the applicable law, doesn't state a cause of action. He indicates that his client signed a contract and that his client signed a note. He doesn't allege any circumstances relative to the fraud that he is setting forth in his pleadings. I say to the Court, without laboring the point, if Your Honor will recall his opening statement, I don't think he has set forth a cause of action. He says he expects to prove the circumstances under which his client signed the note.

For that reason, due to the fact that there are a lot of things alleged in his complaint, and in his pre-trial statement, I make this motion so that the record can be clear as to what he intends to prove or what he expects to prove. Suffice to say, he hasn't alleged that. The decisions say, according to the Negotiable Instrument Law--

7 which I shall refer to as N.I.L., that a holder in due course--there are presumptions that go with it. Of course, admitted, it is

rebuttable; but I think his opening statement should set forth the cause of action.

THE COURT: What is it that you are claiming?

MR. ELMORE: Your Honor, plaintiff's position is actually couched in two propositions. The first being that a negotiable instrument or a contract or deed which is procured without the knowledge of the signer as to the nature of the instrument, and without negligence on that signer's part, is not in fact enforcible. It is void. I will refer Your Honor to Mr. Williston in his work on contracts.

THE COURT: What is the negotiable instruments provision that you are relying upon?

MR. ELMORE: The provision of the Negotiable Instruments Law is Section 23(f) of that law; or, as it is transposed into local law in the Code of the District--if Your Honor will bear with me--Title 28, Section 124, which provides, if the Court please, that in the event a forged instrument passes into the hands of any person, no right can be acquired therefrom by way of enforcing claim on account of that instrument.

And, supplementing that claim, if the Court please, the plaintiff alleges and will attempt to show Your Honor that a forgery which is

8 known at least by the terms of our Court of Appeals of our Circuit, as a forgery by trick was procured through this plaintiff by the Defendant Consolidated; and that as a result, even though Defendant Millrose is able to show that it is a holder in due course, it can take nothing because the instrument is forged.

Those are the two underlying propositions by which the plaintiff seeks relief of this Court at this time.

THE COURT: All right. I will overrule your motion.

MR. PARKS: Your Honor, may I ask the Court this, in order to save time, and be able to understand what counsel intends to prove. He cited the Code which relates to forgery--

THE COURT: I suppose he is relying upon this case that was decided in the Court of Appeals where they deal with this Section 22-

1401. And under this Criminal Statute dealing with forgery, they say:

"That forgery by false making has been committed where the accused, with intent to defraud, proffers a blank note to a customer and induces a customer to sign it on the false representation that the paper is something other than a note, where the customer is found reasonably justified in believing the representation, and where the accused later fills in the blanks and negotiates the paper as a note."

9 MR. PARKS: Your Honor, may I ask counsel, then, if that be his position, would he stipulate that his clients did sign the instruments? I say that for this reason, Your Honor. He alleges in his Complaint fraud and misrepresentation. In the pre-trial statement, he admits his client's signatures on the note, the deed of trust, and the contract. I am inclined to take the position that otherwise he might be raising a new issue, and he is bound by his pre-trial statement.

MR. ELMORE: If the Court please, the plaintiffs will abide by the pre-trial statement in both cases here before you this morning.

MR. PARKS: I take it, Your Honor, what he is saying is, he does admit and we can so stipulate that his clients did sign the deed of trust, the deed of trust instalment note, and the contract.

May we get that stipulation?

MR. ELMORE: We will so stipulate, if the Court please.

MR. PARKS: Now, Your Honor, can we further stipulate that but for the forgery which you speak of, and which I will address myself to the Court later about--but for the fact that there was this forgery, Millrose would be a holder in due course of the note?

10 MR. ELMORE: I do not have sufficient information concerning the relationship between Millrose and the Defendant Consolidated.

THE COURT: Your stipulation is that you stipulate that the signatures on the deed of trust and the note are the signatures of your client?

MR. ELMORE: Yes, Your Honor.

THE COURT: All right.

MR. PARKS: Your Honor, may I ask the Court to ask counsel for the plaintiff, then, to set forth, for purposes of following his examination, exactly what his client intends to testify to relative to fraud?

THE COURT: No, I am not going to go into that. You all have had all this time to make stipulations, if you could; and you know now what his position is. You have completed the pre-trial. He has made his opening statement. Now we are going to get on with the case.

I will overrule your motion.

* * * *

11 BARBARA E. HICKS

was called as a witness in her own behalf and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELMORE:

* * * *

12 Q. Mrs. Hicks, did you, during the month of February, 1955, see anybody about the repairing of your house?

MR. PARKS: Your Honor, I object to that. That is a leading question, the answer to which is obvious.

THE COURT: The objection is overruled.

Read the question to the witness.

Now, you listen to the question. She is reading it to you. Mrs. Hicks, you listen to the question. She is going to read it to you. And then you will answer it.

(Whereupon, the pending question was read by the reporter.)

THE WITNESS: Yes.

BY MR. ELMORE:

Q. Who did you see, Mrs. Hicks? A. Mr. Robinson, of Consolidated.

THE COURT: Mr. Robinson of Consolidated--is that what you said?

THE WITNESS: Yes.

* * * *

13 BY MR. ELMORE:

Q. Would you describe to the Court what happened when you saw Mr. Robinson the first time? A. Well, he come to my house on a Wednesday, in February--

THE COURT: Did you know him before?

THE WITNESS: No, indeed.

THE COURT: All right, go ahead.

THE WITNESS: And he was asking about putting the water in.

* * * *

14 BY MR. ELMORE:

Q. Will you continue, Mrs. Hicks, in telling the Court what happened when you first saw Mr. Robinson? A. When he come in, he was asking me about putting the water in the house; but I told him he would have to come back because my two daughters wasn't home, and I want him to talk with them.

Q. Why did you want him to talk with them?

MR. PARKS: I object to that, if the Court please. That calls for a conclusion.

MR. ELMORE: Shows a state of mind, if the Court please.

THE COURT: The objection is overruled.

MR. ELMORE: Thank you, Your Honor.

BY MR. ELMORE:

Q. Why did you want to speak to your daughters at the time Mr. Robinson first came to see you, Mrs. Hicks? A. Because I did want them there because they understand business more than I did.

15 Q. Did there come a time when you saw Mr. Robinson again after that first meeting? A. Yes. That was on a Saturday morning.

Q. Will you tell the Court what happened then? A. And so he come in, was asking me, me and my children was in the kitchen at the time--

Q. Now, let me interrupt you. When you say, your children, who do you mean? A. Julia Hicks and Janel Turner.

Q. They are your daughters? A. That is right.

Q. And they were there at the time Mr. Robinson came back? A. Yes.

Q. Now, would you proceed, Mrs. Hicks, to tell us what happened? A. He was asking about putting the water in, and doing the front room.

THE COURT: Asking about putting the water in and in what room?

THE WITNESS: In the bath room, and complete the bath room, and run the water from the house to the street.

BY MR. ELMORE:

Q. Were you thinking about doing anything else? A. No. Put-
16 ting in the bathtub. He put in the bathtub and hot water tank.

Q. All right. Now, did Mr. Robinson give you anything to sign at that time that he came to see you, the second time he came to see you? A. Yes.

Q. What did he give you to sign, Mrs. Hicks, so far as you can recall? A. The contract, the paper.

Q. What did you say? A. The contract.

* * * *

17 Q. Mrs. Hicks, I show you a paper which has been marked as Plaintiff's Exhibit No. 1, for purposes of identification, and ask you whether or not you can identify this paper? A. Yes.

Q. What is it, Mrs. Hicks?

18 * * * *

THE WITNESS: An agreement.

BY MR. ELMORE:

Q. Have you ever seen that paper before, Mrs. Hicks? A. Yes.

Q. What do you think it is? A. It is the contract.

Q. The contract that you signed with Mr. Lester Robinson? A. Yes.

MR. ELMORE: At this time, if the Court please, I offer into

evidence Plaintiff's Exhibit No. 1.

THE COURT: Admitted.

THE CLERK: Plaintiff's Exhibit No. 1.

(Thereupon, document heretofore marked Plaintiff's Exhibit No. 1, for identification, was received in evidence.)

BY MR. ELMORE:

Q. Mrs. Hicks, did you read this paper over before you signed it? I am speaking, now, of the contract which you have just seen.

A. No.

Q. Did you ask anybody else to read it? A. My daughter.

* * * *

19 Q. What was your answer, Mrs. Hicks, to the last question?

A. My daughter. I asked her to read it.

THE COURT: Did you ask your daughter to read it or to read it to you?

THE WITNESS: Well, she read it to me. I was there.

THE COURT: All right. Go ahead, Mr. Elmore.

BY MR. ELMORE:

Q. And what did you understand, Mrs. Hicks, after this contract was read to you?

* * * *

THE COURT: What are you trying to get at? What was told to her or what her mental processes were?

MR. ELMORE: I am trying to show the Court that Mrs. Hicks

20 substantially understood what the contract says and no more.

THE COURT: Well, I think that that is understood. She spoke of it as a contract; and you have introduced it; and she says that is the one that she signed.

* * * *

BY MR. ELMORE:

Q. Mrs. Hicks, do you recall what this contract says about payment to Consolidated Company? A. Yes. It wasn't no down

payment. When the work was complete, 30 days after the work was complete, I would start to paying $25 a month.

* * * *

Q. Did you sign any other paper at the time that you signed this contract, Mrs. Hicks? A. No.

Q. What did Mr. Robinson tell you about this contract, if anything? A. He only told me about putting the water in, completing the bath room, putting the bowls on the wall.

Q. Did you have any conversation with Mr. Robinson concerning the sewer and water in the street? A. He said that would be--he
21 would do that, put the water from the house to the street.

* * * *

Q. All right. Now, how much education have you had, Mrs. Hicks? I mean, school education. A. Fourth grade, that is all.

Q. You went to the fourth grade? A. That is all.

Q. Can you read and write? A. A little bit.

MR. PARKS: I object to that, if the Court please. She signed the contract.

THE COURT: The objection is overruled.

BY MR. ELMORE:

Q. The question, Mrs. Hicks, was whether or not you can read and write. What is your answer? A. A little.

* * * *

22 CROSS EXAMINATION

BY MR. BERNSTEIN:

Q. Mrs. Hicks, that is your signature to the paper writing I am now showing you? A. Yes, it look like it.

Q. I didn't ask you if it looked like it. I asked you if it is your signature? A. Yes.

MR. BERNSTEIN: Let the record show that I am referring to a paper writing dated February 15, 1955, which purports to be a $2450 promissory note.

* * * *

23 JULIA ROBINSON

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELMORE:

Q. Please try to speak in a loud, clear voice.

Would you state your name? A. Julia Robinson.

Q. Where do you live? A. 5220 E Street, Southeast.

24 Q. Are you the daughter of Barbara E. Hicks? A. That is right.

Q. Mrs. Robinson, I ask you whether or not you were present at a meeting between your mother and one Lester T. Robinson of 5220 E Street, Southeast, in 1955, in the month of February? A. Yes, I was.

Q. Why were you there? A. I was living there and still do live there.

Q. Would you tell us what transpired, to the best of your recollection, at the time of that meeting? A. You mean what happened?

Q. Yes. A. This Mr. Robinson, the salesman for Consolidated, he came by for to see if my mother wanted to have this work done on the house, which would have been plumbing and putting sheet rock on the living room wall, and to wallpaper it. And she signed a contract for $2,450, supposed to pay $25 a month. The first payment would start 30 days after all the work was completed.

THE COURT: The first payment was to what?

THE WITNESS: Was to start 30 days after all the work was completed.

25 * * * *

BY MR. ELMORE:

Q. Now, did Mr. Robinson have any papers with him at the time you saw him together with your mother? A. Yes, he did.

Q. Did your mother sign any papers that day? A. Yes, she signed the contract; and then there was another paper that I asked him

what was it for. He said this was the paper concerning the work that was to be done.

MR. ELMORE: May I have Plaintiff's Exhibit No. 1?

THE CLERK: Mr. Parks has it.

BY MR. ELMORE:

Q. Mrs. Robinson, did your mother read this contract that was presented to her by Mr. Robinson? A. No, she didn't.

Q. Well, how did she know the contents of the contract? A. She told me to read it and then after I read it, if it was okay for her to sign it, then I would tell her, and then she signed it.

Q. I see. How, what did Mr. Robinson say, to the best of your recollection, concerning the work to be done? A. Well, he said that if he had enough people to sign up to get the water on the street, he could have it put in there by April. And so that is the reason why she

26 signed it.

* * * *

Q. Had you seen Mr. Robinson before this day, yourself, Mrs. Robinson? A. No, I hadn't.

THE COURT: This Mr. Robinson you are speaking of is not related to you in any way; is he?

THE WITNESS: Oh, no; no.

BY MR. ELMORE:

Q. Now, you said there was another paper, to the best of your recollection? A. Uh huh.

Q. Did you see that paper? A. I didn't see it, the whole sheet of the paper. It was a blank sheet and I asked him why should she sign; and he said this was a paper concerning the work that was to be done. I only saw the bottom, about that much of the paper (Indicating).

THE COURT: You say, in addition to this contract, there was a blank paper?

THE WITNESS: It all was a pamphlet-like, they all were to-

27 gether.

THE COURT: And what were you told about this blank paper?

THE WITNESS: It was a paper concerning the work that was to be done, you know.

BY MR. ELMORE:

Q. Did he say any more concerning that paper? A. No; no, he didn't.

Q. What is your opinion, Mrs. Robinson, concerning your mother's ability to read and write?

MR. PARKS: I object to that, if the Court please, as to her opinion as to her mother's ability. I don't think she is qualified.

THE COURT: I will sustain it as to her opinion; but if you know what your mother's ability to read and write is, you can tell us.

THE WITNESS: Well, if she read it, she wouldn't have understood, in the first place. She wouldn't have understood it if she read it. That is why she didn't read it. She doesn't read very well.

* * * *

CROSS EXAMINATION

BY MR. BERNSTEIN:

Q. Mrs. Robinson, you said this other sheet of paper, the man
28 told you, specified the work that was to be done? A. It was a paper concerning the work that was to be done.

Q. Is that the paper? A. No, that is not the one. The paper on this book, together, just raised it up enough for her to sign her signature on it.

Q. Have you ever seen this paper before? A. Looks like a copy of the contract. That is the one that was on top.

Q. And you read this? A. Did I read that one?

Q. Didn't you testify that your mother asked you to read the contract? A. I read the contract. I don't know whether that was the one that I read.

Q. Suppose you read the first few lines or so and tell us if that is the one that you read. Is this the one you read? A. Yes, that is the one that I read. Wait. The one that I read stated what the amount of the work would be and she would pay $25 a month, the first payment

would start 30 days after all the work was completed.

Q. The one you read said she would pay $25 a month, first payment-- A. The payments wouldn't start until 30 days after all the work was completed.

Q. And it would be $25 a month? A. That is right.

Q. Do you find that $25 a month in here? A. No, it isn't on here.

Q. Are you saying, then, that is not the contract you read? A. She signed a paper that looked like this, but the one that she signed stated she would only pay $25 a month, and payments wouldn't start until 30 days after all the work was completed.

* * * *

Q. You answer my direct question. Are you now testifying that this is not the the paper which you read to your mother and which she signed? A. That one couldn't be the one, because the one that I read, I told you, had on it she would pay this $25 a month, starting 30 days after all the work was completed.

Q. So, this cannot be the paper which you read to your mother or which your mother signed? A. That is my testimony.

* * * *

Q. Now Mrs. Robinson, as I understand it, your mother asked you to read this paper to her because she didn't read so well? A. That is right.

Q. She wanted to be sure you read it and understood it and read it to her; is that right? A. That is correct.

Q. Would you explain why you didn't read the other paper she signed when you were there to read it for her? A. When he asked her to sign, I asked him why she should sign it. Just a paper concerning the work to be done. I didn't see the top of the paper, only saw the bottom where she was supposed to have signed.

Q. Nothing to prevent you from having read that paper; was there? A. No.

Q. You just didn't do it? A. That is right.

Q. Is this your mother's signature on the paper writing I am now showing you, which is Defendant's Exhibit No. 1, for identification? A. It looks like her signature, yes.

Q. Is this the paper writing she signed that day in addition to the contract? A. I don't know. It was a blank sheet. The only thing I saw was a space for her signature.

Q. Is this the sheet? A. It was a long sheet of paper. I could not say that was the one she signed.

Q. Did it have any printing on it? Did it have the printing on it that you see here, other than the typewriting or ink writing? A. I couldn't remember that. I couldn't say.

Q. You can't say this is the one she signed that day? A. The only thing I know, she signed at the bottom of the blank. I only saw where she was supposed to put her signature.

32 Q. Did the piece of paper you saw have this fine print in here that appears to be four, five or six lines? A. That, right now, I can't remember.

Q. You just didn't bother to read it? A. I didn't bother to read that there, no.

THE COURT: May I see that?

THE WITNESS: I couldn't tell now if that was on there. Been quite some time ago.

THE COURT: May I see this other one?

MR. BERNSTEIN: I have it right here, Your Honor.

May I continue, Your Honor?

THE COURT: Yes, certainly.

BY MR. BERNSTEIN:

Q. Referring again to this yellow sheet, Plaintiff's Exhibit No. 1, is that or is that your mother's signature? A. It looks like my mother's signature.

Q. You state it looks like it. Can you state whether it is or it is not? A. As far as I know, I would say it is her signature.

Q. When did she sign this, do you know? A. It was in February.

Q. Didn't you, a moment ago, say this was not the sheet that you read your mother, and she signed; and I want to know when was it,

33 then, that she signed this particular sheet that I hold in my hand, which is Plaintiff's Exhibit 1? A. The only paper that my mother signed was the contract and a blank sheet of paper that I was telling you about.

Q. Well, did she sign this paper I have in my hand, being Plaintiff's Exhibit 1? A. The one that she signed said she would pay $25 a month, 30 days after the work was completed.

Q. Do you have a copy of that, or have you seen a copy of that recently? A. No, I haven't.

Q. Why were you there, incidentally, that day? A. I live there.

Q. Just accidental? A. No, I live there.

Q. Did your mother ask you to be present? A. She told me one evening, when I came home there, Mr. Robinson had been there, and she told him for him to come back one day when I would be at home.

Q. In other words, you would be there for your mother's protection, to be sure what she signed you could read to her if necessary? A. That is right.

34 * * * *

REDIRECT EXAMINATION

BY MR. ELMORE:

Q. Did you have any reason to mistrust Mr. Robinson? A. No, I didn't.

Q. Were relations pleasant between you and him and your mother and him? A. Yes, very pleasant.

MR. ELMORE: I have no further questions, if the Court please.

THE COURT: Step down.

MR. BERNSTEIN: Just one question.

RECROSS EXAMINATION

BY MR. BERNSTEIN:

Q. Did you or your mother ever know Mr. Robinson before this

time he came there? A. No, that was my first time to have ever seen him.

Q. You didn't know anything about his character or background? A. I am speaking of--he had a very nice personality. I am not speaking of his background.

Q. You had no reason to know his reputation in the community? A. No.

35 Q. You didn't know whether he was honest or dishonest; did you? A. You can look at a person and tell whether they are honest or dishonest.

Q. Other than looking at him, you had no reason or way of knowing whether he was honest or dishonest; did you? A. No.

Q. Nor did your mother? A. No.

* * * *

LESTER J. ROBINSON

was called as a witness by the plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELMORE:

Q. Would you please state your name and address, Mr. Robinson? A. Lester J. Robinson, 4545 Connecticut Avenue, Northwest, Washington, D.C.

Q. In the month of February, in the year 1955, by whom were

36 you employed? A. Consolidated Engineering and Distributing Company.

Q. Who was the president of that corporation at that time, Mr. Robinson? A. Mr. Lieberman.

Q. What was your capacity? A. Salesman.

Q. What was the business of the company? A. Home improvements.

Q. Do you recall whether or not you had an occasion to visit Barbara E. Hicks at 5220 E Street, Southeast, in February 1955? A. Aside from the date, I recall having seen Mrs. Hicks. I couldn't

tell you just what time it was.

* * * *

Q. Mr. Robinson, I show you a document which has been
37 labeled for identification purposes as Plaintiff's Exhibit No. 1, and I ask you whether or not you see your signature on that sheet? A. Yes, sir, I do.

Q. What is the date of that sheet, Mr. Robinson? A. Febru-12, 1955.

Q. And will you further identify that sheet, so far as your recollection serves you? A. This was a contract entered into between Barbara Hicks and Consolidated Engineering and Distributing Company of America, Inc., which provided for the bringing in of sewer and water, placing of a three-piece bath room set, refinishing the side walls of the bath, covering the floor of the bath room with asphalt tile, and installing a 42-inch kitchen cabinet sink, a 40-gallon electric hot water heater, covering the walls and the ceilings of the living room with plasterboard, replacing two bed room sash with new sash, and paper those two rooms; and providing that the property is now free and clear and that we would place a first trust on the same to cover the cost of the improvements which were figured at $2450.

Q. Now, what you have just read, is that in your writing, Mr. Robinson? A. Yes, it is.

38 Q. Who was present when you saw Mrs. Hicks, Mr. Robinson? A. Frankly, I don't remember.

Q. Do you remember whether or not she was alone together with you? A. No. I have a recollection of there being more than Mrs. Hicks and myself there, but I didn't know who the other people were or what their relationship was to Mrs. Hicks.

THE COURT: This contract calls for her not to pay anything down; does it not?

THE WITNESS: That is correct, yes, ma'am.

THE COURT: And it calls for her not to pay anything until the work is completed?

THE WITNESS: There is no such provision, but that was told to her.

BY MR. ELMORE:

Q. What do you mean, there is no such provision? A. There is no provision in the contract which states when she is going to start paying or how she was going to start paying; but she was told there would be no payments until after work was completed.

THE COURT: Was she told what the payment would be then?

THE WITNESS: My recollection is that it would be approxi-
39 mately $25 per month.

THE COURT: To begin after the work was completed?

THE WITNESS: My usual statement--and I believe it was made in this case--was that it would begin 30 days after the work was completed.

MR. ELMORE: I offer this for identification purposes as Plaintiff's Exhibit No. 2.

THE CLERK: Plaintiff's Exhibit No. 2, for identification.

* * * *

BY MR. ELMORE:

Q. How long were you employed by Consolidated, Mr. Robinson? A. My recollection, sir, is that I went to work in November of '54 and continued until the end of June or some time in early July '55.

Q. I see. That was full time employment during that time? A. Yes, sir.

Q. Were you familiar with the sales operations of Consolidated Engineering and Distributing Company? A. Yes, sir.

Q. Who instructed the salesmen as to procuring of the con-
40 tracts, Mr. Robinson? A. Both Mr. Lieberman and Mr. Klar.

Q. Did you ever attend any meetings at which such instructions were given by either of those gentlemen? A. Yes, sir.

Q. What was told to the salesmen by Mr. Lieberman or Mr. Klar?

* * * *

41 A. We were instructed--my recollection is--five signatures. The contract, application for credit, an FHA note, if it was an FHA transaction--

* * * *

42 THE COURT: You mean, on the day that you went out there to get the contract signed that you got all of these other papers signed at the same time?

THE WITNESS: Yes, ma'am. Yes, ma'am.

BY MR. ELMORE:

Q. Mr.-- A. Pardon me. If it was not an FHA transaction, then the application for credit was not necessary, and the FHA papers were not necessary.

THE COURT: So that if it wasn't an FHA, then you only got three papers?

THE WITNESS: Three, that is right, yes, ma'am.

BY MR. ELMORE:

Q. And what were those three? A. That was a contract, the H Form, and the H Note.

Q. Mr. Robinson, I present to you a paper which has been marked for identification as Plaintiff's Exhibit No. 2, and I ask whether or not you can identify what you see? A. This is the paper we call--

MR. BERNSTEIN: Before the witness has answered, may we see the exhibit? He can say, yes, or, no. The question was, can he, which calls for a yes, or, no answer. I presume the answer is, yes, to the last question?

THE WITNESS: Yes.

43 BY MR. ELMORE:

Q. What is this paper, Mr. Robinson?

MR. BERNSTEIN: I object. If the Court will examine the document, the Court will find that it is labeled at the top, "Credit Application." The witness has already testified he had those signed only in FHA cases and this is not an FHA case and has no relevancy in this case.

THE COURT: I don't believe anybody has said whether this was an FHA case or not.

MR. BERNSTEIN: Well, I suggest that that then first be asked in order to determine.

THE COURT: Is this an FHA case?

THE WITNESS: No, ma'am, it is not.

BY MR. ELMORE:

Q. Mr. Robinson, you referred to H instruments, I believe, prior in your testimony? A. Yes, sir.

Q. And I believe you said that you had five signatures to get when an FHA application was in order? A. Yes, sir.

Q. And I believe you further said that three signatures were necessary when a building and loan job was what you were interested in? A. Yes, sir.

44 Q. In the case of either one of these situations, that is, whether the person was FHA or building and loan, would you use different forms or the same ones? A. The contracts were always the same.

Q. Yes. A. The H Forms were always the same. The FHA Form is a different form of application which I don't see here. FHA note is a different form of application which I don't see here.

Q. In the case of Barbara E. Hicks, the plaintiff in this case, do you know what kind of a form she signed other than the contract? A. To my best recollection, it was an H Form.

Q. I now ask you to identify this paper, Mr. Robinson. A. This is what we term an H Form.

Q. Going back to--

THE COURT: Is that the form that you had marked No. 2, for identification?

MR. ELMORE: Yes, Your Honor.

Plaintiff offers this in evidence as its Exhibit No. 2.

* * * *

45 THE COURT: Now, he has testified that this was the type of form. This is an H Form?

THE WITNESS: Yes, ma'am.

THE COURT: And you said, according to the best of your recollection, she signed an H Form?

THE WITNESS: Yes, ma'am.

* * * *

46 THE COURT: I will overrule the objection. You are offering this form?

MR. ELMORE: I am offering a form in evidence, yes, Your Honor.

THE COURT: You say that is the kind of form that Mrs. Hicks signed?

THE WITNESS: To the best of my knowledge, yes, ma'am.

* * * *

THE COURT: Do you recall any case that wasn't an FHA where you had a different form signed from this H Form?

THE WITNESS: No, ma'am. That was the form we carried and that was the form we had signed. And if Mrs. Hicks signed a form in my presence, that was the form she signed.

* * * *

47 BY MR. ELMORE:

Q. Mr. Robinson, what were the instructions of Mr. Lieberman, again, as to the execution of the H Form, as you call it?

MR. BERNSTEIN: He is asking for repetition. The word "again" was used. It has already been testified to.

THE COURT: I will overrule the objection.

THE WITNESS: The H Form was to be signed in two places on the note and on the reverse side, which was a deed of trust.

THE COURT: Did you carry a notary out with you?

THE WITNESS: No, ma'am.

THE COURT: In any of these?

THE WITNESS: No, ma'am.

BY MR. ELMORE:

Q. Now, Mr. Robinson, I ask you whether or not you were

instructed in reference to showing the inside pages of this form to the

48 customer? A. I received no definite instructions, no, sir.

* * * *

49 THE COURT: Can you identify your signature?

THE WITNESS: I do identify the contract. I know I was there. I was there after the contract was signed. I was there when the work was in progress. But I don't recall the particular transaction. I can recall more about Brent and Scott; but I can't recall the transaction about Mrs. Hicks. I am trying to be very honest with you and I am trying to tell you exactly what is so.

* * * *

BY MR. ELMORE:

Q. Mr. Robinson, what was your general practice in so far as displaying the inside pages of the H Form to customers?

MR. BERNSTEIN: Objection.

THE COURT: I will overrule the objection, in view of the circumstances.

50 THE WITNESS: Unless there was some particular conversation in reference to the H Form, it was held similar to the way you are holding it now and the outside page was given to them for signature and the inside page, that is, the reverse side of that, was given to them for signature. The inside was not shown.

BY MR. ELMORE:

Q. Was any information volunteered by you concerning--

A. Yes, sir.

Q. What was volunteered? A. The information volunteered by me was that they were signing a note which would become a lien on their property, was for the purpose of interim financing, and that the permanent financing was to be obtained when the job was completed. This permitted Consolidated to get money to do the job prior to the time that the permanent financing was taken care of.

* * * *

Q. Mr. Robinson, I realize this has been some three years

since this transaction took place. I ask you whether or not you were a

51 witness in a criminal action brought by the United States of America against Sam Lieberman and others?

MR. BERNSTEIN: If the Court please, counsel is now proceeding to impeach his own witness. I have no strenuous objection. What is the relevancy of whether he is a witness in some other case?

MR. ELMORE: Your Honor, I intend to refresh the witness' recollection.

THE COURT: You may.

MR. BERNSTEIN: There is no showing there is a need to have his recollection refreshed.

THE COURT: Oh, yes, there is. He has testified that he doesn't remember.

MR. BERNSTEIN: He remembered clearly the last question asked him. It is a question of what he is going to ask him.

THE COURT: I will permit him to put the question. He hasn't even yet put the question. I do not know what it is. You have objected before he stated his question.

* * * *

52 BY MR. ELMORE:

Q. Do you recall, Mr. Robinson, whether you were inquired of in the criminal action by the United States Attorney concerning your procedure generally in procuring the signatures to the H Form from customers? A. Yes, sir.

Q. I ask you, Mr. Robinson, if the following reading, to your best recollection, is correct.

* * * *

53 MR. ELMORE: The question:

"Were you ever told by the defendants Lieberman or Klar as to what to say in case any of the home owners actually realized they were signing a blank note or deed of trust?

Answer: General instructions were that this was the protection for Consolidated Company from the time the work was started

until the time that the permanent financing had been obtained.

"Question: Did you ever tell people pursuant to instructions from either of these defendants . . ."

--that is, Lieberman and Klar--

" . . . that they were signing a blank note or deed of trust? Answer: I don't recall that I ever offered them that information. But I explained it to them if I was asked what is was."

* * * *

THE COURT: The question is, does that refresh your recollection?

THE WITNESS: Yes, ma'am; and I think it is about the testi-
54 mony I made here already.

* * * *

BY MR. ELMORE:

Q. I ask you, Mr. Robinson, whether you ever volunteered any information to customers unless you were asked concerning the note and deed of trust portions of this H Form?

* * * *

55 THE WITNESS: It is an awful difficult question for me to answer. You say, did I ever. I made several calls, hundreds of them. I would say, I have volunteered the information on some of those calls, yes, sir.

BY MR. ELMORE:

Q. Was it your general practice to volunteer the information? A. Usually, the question came up. It wasn't necessarily one of those things that didn't come up. It did come up. It wasn't something being hidden. Not by me, in any event.

Q. Did you open the form, Mr. Robinson? A. Not unless it was necessary to open the form.

Q. Were you given any instructions as to whether or not you were to open that form? A. No, I wasn't given any instructions. I used it as they told me to use it, to use the front and reverse side, but I wasn't told I couldn't open it or it was unlawful for me to open it or

anything of that sort.

* * * *

56 CROSS EXAMINATION

BY MR. BERNSTEIN:

* * * *

Q. Did anyone, on behalf of the Millrose Corporation, ever approach you to talk about what you knew about this case? A. No, sir.

57 Q. So the first time anyone, on behalf of Millrose, is talking to you at all is my talking to you now; is that correct? A. Yes, sir.

Q. Now, this so-called H Form, that counsel has asked you about, in the middle of the first page is a form of promissory note; is there not? A. Yes, sir.

* * * *

Q. And if a customer made any inquiry about what it was you were asking them to sign, what would you say? A. That it was to protect Consolidated for interim financing until the permanent financing was obtained.

Q. Would you tell them this was a note? A. Yes, sir.

Q. And that this was a lien on their property? A. Yes, sir, I did.

Q. Now, is it possible in some cases where it wasn't FHA that this note would be cut out and handed to the customer to sign without the form being in the whole sheet? A. Never by me, no, sir.

* * * *

58 Q. Did you ever do anything to prevent a customer from reading these papers that you were handing them? A. No, sir.

* * * *

THE COURT: When you told these people that they weren't to pay anything until after the work was completed, you, nevertheless, were getting a note from them which was taking the place of money?

THE WITNESS: Yes, ma'am, that is true. But we were likewise told at Consolidated, as a matter of fact, the method in which we were told is that early in December, is my recollection, in 1954,

Mr. Lieberman advised us that he had made a financial arrangement which would permit him to do a great deal of, a larger volume of business than he had heretofore been able to do; that he was able to get through this H Form advances to him for work that was to be done and would finance that work until such time as he could place--

THE COURT: I wasn't inquiring about that.

59 THE WITNESS: --permanent financing. The note was never filled out in my presence. There was never any indication that that note that they had to pay a certain amount of dollars at a certain particular date.

THE COURT: You mean that at no time did you have this note filled out?

THE WITNESS: Never. Never. I never obtained anything but signatures.

THE COURT: Did you say to them: This is a note which you are signing?

THE WITNESS: Yes, ma'am, I did.

THE COURT: Of so much money?

THE WITNESS: The amount of the job was indicated. I don't think I said--in this particular case, I have no recollection. But I don't recall saying to these other people, this note is being made out for $2450.

THE COURT: And is payable a short time later?

THE WITNESS: No, ma'am, there was no such statement made because, frankly, I didn't know how it was used by Consolidated.

THE COURT: So you were telling these people that they would begin paying 30 days after the work was completed, and you were getting a note which was due much before that?

THE WITNESS: I didn't know that.

* * * *

60 MR. ELMORE: At this time, if the Court please, it is my understanding that counsel for Defendant Millrose and I have stipulated that there is of record a certain deed of trust from Barbara E. Hicks to

the defendant's trustees in this case, conveying Lot 29 in Square 5316 to these defendant's trustees to secure the defendant Consolidated Engineering and Distributing Company of America, Inc., in the payment of a note in the amount of $2,450.

61 THE COURT: Dated?

MR. ELMORE: Dated February 15, 1955. By the recitations of the deed of trust, the note is payable within 120 days after the date thereof.

THE COURT: What is the liber and folio number?

MR. ELMORE: I am sorry. The liber and folio is 10368, at folio 481.

THE COURT: And the date of recording?

MR. ELMORE: The date of recording, February 16, 1955.

THE COURT: All right.

MR. ELMORE: I would like to offer this in evidence.

MR. BERNSTEIN: We waive formal proof.

MR. ELMORE: As I understand it, Your Honor, counsel for Defendant Millrose, subject to relevancy, stipulates to the admission into evidence of a record of the Recorder of Deeds of this District, titled, Annual Report of Consolidated Engineering and Distributing Company of America, Inc., which is dated March 31, 1955.

* * * *

62 MR. ELMORE: Yes, subject to those.

All right, then, you will waive formal proof?

MR. BERNSTEIN: We will waive formal proof, but the gentleman from the Recorder of Deeds doesn't understand, Your Honor, that he can return without it.

* * * *

MR. ELMORE: I want to show, if the Court please, the identity of the officers of the corporation of Consolidated Engineering and Distributing Company.

THE COURT: They are?

MR. ELMORE: According to this form, they are Sam

Lieberman, President; Phillip Goldstein, Vice President; Helen Lieberman, Secretary; Phillip Goldstein, Treasurer.

MR. BERNSTEIN: We will so stipulate. Again reserving the question of relevancy and materiality. We will stipulate that that is the fact.

* * * *

71 SAM LIEBERMAN

was called as a witness by the plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELMORE:

Q. Mr. Lieberman, will you please state your name and address to the Court? A. Sam Lieberman, 7201 Edgewood Avenue, in Silver Spring, Maryland.

Q. Mr. Lieberman, in the year 1955, were you president of Consolidated Engineering and Distributing Company of America?

72 A. I was.

Q. I also ask you, Mr. Lieberman, whether or not you were convicted of two charges of forgery before this Court?

MR. BERNSTEIN: Objection, as being a question proper only to impeach a witness.

THE COURT: You know, you are calling him as your witness.

MR. ELMORE: Yes, Your Honor.

THE COURT: You have him as your witness. I don't see that you are entitled to impeach him.

MR. ELMORE: Well, this is not an actual impeachment, if the Court please. I am merely setting a basis--

THE COURT: You are not asking him that to impeach him?

MR. ELMORE: No, Your Honor, I am not.

MR. BERNSTEIN: May I then inquire what the basis of the question is?

MR. ELMORE: The basis of the question is--

MR. BERNSTEIN: So I know what to say.

MR. ELMORE: --similar to the proffer made previously, if the Court please. That is, as to the background of these various contracts.

MR. BERNSTEIN: If the Court please, if I understand counsel, this is a second effort by counsel to offer in parts or the substance of

73 criminal 1172-55; and I would make the same objection to the indirect attempt to do that which the Court has forbidden directly. That is, to offer in any part of the conviction or opinion or indictment in that criminal file.

THE COURT: I will overrule the objection. He may answer the question.

MR. ELMORE: Thank you, Your Honor.

THE WITNESS: I was.

BY MR. ELMORE:

Q. Do you know, Mr. Lieberman, whether or not the Court of Appeals has acted upon that action? A. The record speaks for itself, Mr. Elmore.

Q. Can you tell us at this time, Mr. Lieberman, if the Court of Appeals has decided the correctness of the action? A. They have. It has been affirmed.

Q. Mr. Lieberman, do you have any personal knowledge of the surrounding circumstances in so far as a promissory note of one Barbara E. Hicks is concerned? A. I don't know any more about that particular note than any other notes that came through Consolidated Engineering.

Q. I see. Your answer is that you do not know anything about the surrounding circumstances? A. I don't know anything about the particular circumstances other than it was another contract and an-

74 other note.

Q. You never saw this woman, I gather. A. Never saw who?

Q. You never saw Barbara Hicks, to your knowledge? A. I think she testified in the criminal trial. I wouldn't recognize her.

* * * *

Q. Mr. Lieberman, I ask you if you recognize this type of paper which I am showing to you as Plaintiff's Exhibit No. 2? A. I do.

Q. Would you tell the Court what you denominated that paper in Consolidated Engineering and Distributing Company? A. Please be more specific when you use the word "denomina ted."

Q. What did you commonly call this instrument, that you are looking at, at Consolidated? A. This was our H Plan.

THE COURT: Your blank or H Form?

THE WITNESS: H Plan, Your Honor.

THE COURT: H Plan?

75 THE WITNESS: Yes.

BY MR. ELMORE:

Q. How did that come about, Mr. Lieberman? I mean by that, the physical form of those papers.

MR. BERNSTEIN: Do you mean how it was printed?

BY MR. ELMORE:

Q. How was it designed, if you know? A. These papers were turned over to the printer and he is the one that got the work done on it.

THE COURT: Well, did you make up what was to go on the paper?

THE WITNESS: Your Honor, we gave the printer a promissory note, a deed of trust, a credit application of ours.

THE COURT: Did you tell him what arrangement or form you wanted it in, which was to appear first, second, third, fourth, and fifth?

THE WITNESS: No, ma'am. When these papers were turned over to him, they were given to him to make a compact paper with all these items in it.

THE COURT: Are you saying without any suggestion from you that the printer made this up, any suggestion from you as to the arrangement?

THE WITNESS: At the time, Your Honor, that this was made

up, we didn't contemplate what came after it.

76 THE COURT: That is not the question that I asked you.

Read the question to the witness.

(Whereupon, the pending question was read by the reporter.)

THE WITNESS: I wasn't particularly concerned about the arrangement of it as long as it had all of it.

THE COURT: Mr. Lieberman, can't you answer the question? I didn't ask you if you were concerned.

THE WITNESS: Your Honor, I am not trying to be rude or abrupt or anything, ma'am.

THE COURT: It is a simple question.

THE WITNESS: When you say, any suggestions from me--

THE COURT: Did you send him some form that was pasted up?

THE WITNESS: Yes, ma'am. No, we sent him all of the constituents of this.

THE COURT: Did you tell him what arrangement you wanted it in, what form you wanted it in? What was first, what was second, and so on?

THE WITNESS: No, ma'am, I did not.

BY MR. ELMORE:

Q. Mr. Lieberman, on the front of the form there are perforations, are there not, around the note? A. That is correct.

77 Q. Did you instruct the printer to so perforate the paper, to your best recollection? A. I didn't instruct him on how to perforate the paper. What I told him, when the job was completed, each of these papers would become an intricate part of the contract and they had to be detachable.

Q. I see.

MR. ELMORE: I have no further questions, if the Court please.

MR. BERNSTEIN: No questions.

THE COURT: When you got these forms back in your office, which part of it would be blank and which would be filled in?

THE WITNESS: Your Honor, the notes were blank and the deeds of trust were blank.

THE COURT: Well, what did you instruct your agents to tell them as to what they would have to pay, these people who signed those notes?

THE WITNESS: Your Honor, these notes were all filled out for the amount of the contract. In a few instances, they were not. The reason they weren't filled out--Let me get myself straight here.

The total face amount of the notes agreed with the contract in

78 maybe 490 out of 500 cases. The only deviations there were is where they were delinquent on a first trust payment or their taxes hadn't been paid, or there was some prior lien. In that case, we paid off that lien or taxes in order for this to be a good second trust of record. But there were no cases where these notes were filled out in excess of the amount of the contract or any prior lien that would have to be paid off.

THE COURT: Well now, in this case, Mrs. Hicks testified that she wasn't to pay anything until this work was completed.

THE WITNESS: That is correct.

THE COURT: And then this deed of trust goes on record about the next day, calling for $2450 to be paid in 120 days. There is a lot of difference between those two.

THE WITNESS: Yes, ma'am. If I may make an explanation, I believe I can explain that to you.

THE COURT: Can you explain to me what was told to Mrs. Hicks about it?

THE WITNESS: No, ma'am, I wasn't there.

THE COURT: Well, it wouldn't be helpful to me if you can't tell me that.

Anything more that either of you want with this witness?

79 CROSS EXAMINATION

BY MR. BERNSTEIN:

* * * *

Q. What were salesmen told to tell the customers with respect to the notes that they were filling out, as to what they meant? What the interim financing was as against when payment was to be made?
A. Payment was to be made when the work was completed and this note was paid off at the title company and refinanced.

THE COURT: You mean that you instructed them to tell them that in any event?

THE WITNESS: Not in any event.

THE COURT: Only if they asked?

THE WITNESS: Your Honor, the instructions that the office gave the salesmen were to tell the people that this was a lien for a construction loan, the purpose of this form was to get a construction loan for these people. When the work was completed, the people would go to the title company and at that time this interim note would be paid off.

THE COURT: You see, the trouble is that this lady who has
80 come in here, Mrs. Hicks, has said she wasn't to pay anything until this work was done.

THE WITNESS: That is right.

THE COURT: And, apparently, the work hasn't been done, yet; has it?

THE WITNESS: I don't think so, Your Honor.

THE COURT: Well, then, if it were the way that it was represented to her, she still wouldn't be due to pay anything because she wasn't to pay anything until the work was completed.

THE WITNESS: That is correct.

THE COURT: Now she finds herself with this deed of trust on record.

THE WITNESS: We understand that, Your Honor. * * *

* * * *

82 BARBARA E. HICKS

was recalled as a witness in her own behalf and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. ELMORE:

Q. Mrs. Hicks, have you known during your lifetime anybody by the name of Louise Green? A. No, I never known her.

83 Q. I ask you, at the time that Mr. Robinson came to see you, and the time that you signed the contract that you testified about earlier today, was there anybody present other than your daughters and Mr. Robinson and yourself? A. That is all.

Q. Was there anybody there other than those people? A. No, no, no, no.

Q. Did you ever appear before a notary public at your house or anywhere else? A. No.

Q. Concerning any papers involving your house? A. No.

Q. In this matter? What is your answer? A. No.

MR. ELMORE: I have no further questions.

CROSS EXAMINATION

BY MR. BERNSTEIN:

* * * *

86 Q. You just said, Mrs. Hicks, didn't you, that it looked like your handwriting? Isn't that what you said a moment ago?

Mrs. Hicks, will you listen to me a moment? Didn't you, a moment ago, say, it looks like your handwriting? A. Yes, I said it looked like my handwriting.

Q. You actually don't remember signing that; do you, Mrs. Hicks?

Mrs. Hicks. Mrs. Hicks, you don't acutally remember when you signed that document; do you? A. That is my handwriting.

Q. No, but I say, you don't remember signing that; do you? A. Yes, I think I do.

Q. You say you think you do? A. Yes.

Q. Can you speak up, Mrs. Hicks, please? A. Yes.

Q. Do you remember signing that? A. Yes, I remember signing one.

Q. Who was it, a man or a woman, the notary public who signed after you signed? * * *

A. It was a woman.

87 Q. It was a woman. You had to read this name to be sure; didn't you? A. What?

Q. You read this name to see the name, Marie? A. No, I didn't remember--what I mean--excuse me for saying this.

THE COURT: Just a minute. Will you stand back.

THE WITNESS: When I went down there, I remember signing once when I went down and had this veteran's--when I was getting my veteran's check, I had to sign that, too.

* * * *

90 WILLIAM W. SCOTT

was called as a witness by the plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELMORE:

* * * *

98 THE COURT: Mr. Elmore, I am going to let you put the evidence on. I overrule the objection at this point. It may be I will decide later that I will take it out; but at this time you may go forward.

MR. ELMORE: While the Court is still on the point, might I cite one more authority for your convenience?

THE COURT: Yes.

MR. ELMORE: That is 32 Corpus Juris Secundum, evidence, Section 580, pages 435 and 36, dealing with that problem.

(Whereupon, the pending question and answer were read by the reporter.)

BY MR. ELMORE:

Q. You say you did not read the contract before you signed it, Mr. Scott? A. No, sir, I didn't.

Q. Did anybody else in that room read the contract? A. No.

Q. How many years of school did you go to?

99 MR. BERNSTEIN: Objection.

THE COURT: Objection overruled. You may answer.

THE WITNESS: I didn't--

BY MR. ELMORE:

Q. How far did you go in school, Mr. Scott? A. First reader.

THE COURT: Mr. Elmore, the closer you stand to him, the lower he drops his voice. If you stand over here, maybe his voice would come out so we could hear it.

Where did you say?

THE WITNESS: First reader.

THE COURT: First reader?

THE WITNESS: Yes.

BY MR. ELMORE:

Q. How many years of school did you go to?

MR. BERNSTEIN: Objection.

THE COURT: Objection overruled.

THE WITNESS: Didn't go any; only had two or three months a year. I went three years, something like that, two or three months; that is all I got.

BY MR. ELMORE:

Q. Did you look at this paper, Mr. Scott, from Mr. Robinson? A. No more than to sign it, that is all.

100 Q. How well could your wife read? A. About the same as I could. No better than I could.

Q. What was said by Mr. Robinson at the time that this contract was presented to you, Mr. Scott?

* * * *

THE WITNESS: Mr. Robinson come to the house; wanted me to sign this contract, put water in my street and I wouldn't sign it until water was coming through the street. He said water would be through there soon. And I told him I would rather wait until the water come through. He went away that day; come back the next day; and told me he had the right dope on the water; water would be through in April.

I thought if the water was coming through in April, I would need these things; and I went and signed the contract for him to put it in.

Q. How much was this work going to cost you, Mr. Scott?

A. $1600.

Q. $1600? A. Yes, sir.

Q. Did Mr. Robinson tell you when you had to pay that $1600?

* * * *

101 THE WITNESS: When the work was completed, he said my payments would start then.

MR. ELMORE:

Q. How were you to pay it when you began? A. He told me he would take a note--going to take the note over on my house, and my payments would be just the same. The note would be paid in with my notes.

THE COURT: You mean to say when he came to see you, you already had a mortgage on your house, or trust on your house?

THE WITNESS: I owed some on my house. I was buying my house, paying for it. He was going to pay the rest of it on my house. My notes wouldn't be no more. Just paying as I pay my notes.

BY MR. ELMORE:

Q. Did you sign anything else at the time that you signed that contract? A. No, sir.

MR. ELMORE: May I have this marked for identification Plaintiff's Exhibit No. 4?

102 THE CLERK: Plaintiff's Exhibit No. 4, for identification.

(Thereupon, document was marked Plaintiff's Exhibit No. 4, for identification.)

MR. BERNSTEIN: Did I understand the witness' last answer was he did not sign anything else?

MR. ELMORE: Yes.

BY MR. ELMORE:

Q. I show you this piece of paper, Mr. Scott, which has been marked for purposes of identification as Plaintiff's Exhibit No. 4. I

ask you whether or not your signature appears on that paper? A. Yes, that is my signature; my wife's too; but I don't remember signing this piece of paper. Had a piece of white paper like this what I signed. I don't remember this here at all.

MR. ELMORE: I offer this in evidence, if the Court please.

THE COURT: Show it to the other side, please.

MR. BERNSTEIN: Do you offer it as being a document with his signature?

MR. ELMORE: Yes.

* * * *

103 THE COURT: Very well; admitted.

THE CLERK: Plaintiff's Exhibit 4.

* * *

BY MR. ELMORE:

Q. Mr. Scott, was the work done on your house completed?

MR. BERNSTEIN: Objection.

THE WITNESS: No, it was not.

* * * *

104 MR. BERNSTEIN: I will stipulate that the witness did receive a letter from Millrose which, in substance, said Millrose was the holder of the note and the note was in default, and that he should pay or they would have to take action.

* * * *

105 BY MR. ELMORE:

Q. Mr. Scott, do you know anyone by the name of Louise Green? A. No, sir, I do not.

Q. Have you ever appeared before a notary public in your house? A. No, sir.

Q. Or outside of your house since the date of that contract, that is, in January of 1955, concerning your house? A. No, sir.

* * * *

CROSS EXAMINATION

BY MR. BERNSTEIN:

* * * *

107 Q. That note that counsel showed you, Mr. Scott, that is your signature, your true signature? A. That is my signature.

Q. So there is no question that you signed this note; is there? A. I signed the note.

Q. You don't remember? A. I don't remember. That is my signature right there.

Q. Well now, when you signed the contract, you signed more than one thing; you signed a couple of things? A. No, only this piece of paper here.

Q. Is this the only signature you made, once, when the man was there to see you; or did you sign more than once? A. Only once, as I see it.

Q. You obviously signed another. A. I said I signed that one. That is my signature; but I don't remember signing no small piece of paper like that. All I signed on sheets like this.

Q. This was part of a bigger sheet, wasn't it, when you signed it? A. Well, I don't know about that.

Q. Do you remember signing a sheet of paper that looked like this, Mr. Scott, and you signed where that note was part of this paper?

108 Do you remember signing that? A. No, I don't. I signed a piece of paper on top of a piece of paper like this; and I signed at the bottom.

Q. Didn't you sign a sheet like this and sign right there? A. I don't remember nothing like that.

Q. You don't remember one way or the other? A. No.

Q. You knew that when you made this contract with Consolidated that there was to be a note on your house; didn't you? A. No, he didn't tell me would be a note on my house. When I made that contract with Mr. Robinson, told me that--I told him, I says: I already had them do some work on my house. I said: I am not able to pay this here and this together. And he said: Well, we will take your note over.

Q. We will take your note over? A. Yes, sir; and I was going to pay him when the work is completed. My money starts off when the work is completed, just as I was paying; wouldn't be any more.

Q. Now, you say you signed the contract and this signature is yours, too, on this note? A. That is right.

Q. Did you sign any other papers? A. I don't remember.

109 Q. How many times did you sign your name when that man was there; do you remember? A. I think I signed twice.

THE COURT: What did he tell you you were signing when you were signing?

THE WITNESS: He didn't tell what I was signing.

THE COURT: You mean to say that he just had a paper and stuck it under--

THE WITNESS: No, he--

THE COURT: Wait a minute until I finish.

You mean to say that he came with a paper and stuck it under your nose and without telling you anything, you just signed it?

THE WITNESS: He made this contract out, what I was supposed to have in the house.

THE COURT: But you said you didn't read the contract.

THE WITNESS: No, ma'am, I didn't read it.

THE COURT: How did you know what it was about?

THE WITNESS: It was about the plumbing, what he told me.

THE COURT: That is what I asked you. What did he tell you?

THE WITNESS: Told me about the plumbing. After he got it all

110 filled out, told me to sign and my wife to sign.

THE COURT: He told you that he was going to put this plumbing in?

THE WITNESS: Yes, ma'am.

THE COURT: And you were signing for the plumbing; is that it?

THE WITNESS: Yes, ma'am.

THE COURT: What did he tell you about how you were going to pay for it?

THE WITNESS: He was going to take the note over on my house.

THE COURT: That was the note you had on the house for some time?

THE WITNESS: That is the note I had; and he would take the note over on my house; and my payments wouldn't be any more, the same money as I was paying on the house.

THE COURT: Did he tell you he wanted you to sign a note that day?

THE WITNESS: No, he didn't tell me about that.

THE COURT: Did he tell you he wanted you to sign a deed of trust that day?

THE WITNESS: No, he didn't say anything about that; didn't say anything about it. As I thought, I was just signing for the plumbing to go in there. Plumbing was to go in, to be done.

111 MR. BERNSTEIN: May I inquire a moment, Your Honor?

THE COURT: Yes.

BY MR. BERNSTEIN:

Q. If I understand you, you said the man told you he would take over the note? A. That is right.

Q. And you just pay the same amount as you had been paying before? A. He was going to pay what I owed on the house, pay it off to Mr. Gray.

Q. You wouldn't have to pay any more than you were before? A. I wouldn't have to pay any more than I would before.

Q. Getting the plumbing work for nothing? A. Adding the plumbing work on to what I owed. Pay it off by that.

THE COURT: I suppose what he means is the old loan was to be paid off, a new one would be put on, and his monthly payments would be no more than the original one. That is what I understand.

BY MR. BERNSTEIN:

Q. Did you understand they were going to add money on to the other note? A. I know it would be more, $1600 added on to it; but he

112 said I wouldn't have to pay no more. My notes would run no more.

Q. Your monthly payments wouldn't run any more? A. My monthly payments wouldn't be any more.

Q. You knew the $1600 would be added to the note? A. I knew that.

Q. How much did you owe on your old note? A. I think at that time I owed twenty-four, twenty-five hundred dollars.

THE COURT: When was it to be added to the note?

THE WITNESS: When the work was completed, when I am supposed to start to paying.

BY MR. BERNSTEIN:

Q. Well, you knew that you were signing for this money for the plumbing to be added to the old note? A. He was going to take the house over.

Q. In other words, the amount you owed plus the new amount for the plumbing were to be added together; is that right? A. That is right; and my notes wouldn't be any more.

Q. You mean the monthly payments wouldn't be any more? A. Monthly payments wouldn't be any more.

Q. The total amount of the note would be more? A. Would be more; I knew that.

Q. You didn't say anything to him about you couldn't read; did you? A. He didn't ask me.

Q. You didn't say it, either? A. No, I didn't. He didn't ask me.

Q. As far as you knew, he didn't have any idea that you couldn't read what was before you; did he? A. He didn't ask me to read it.

Q. As a matter of fact, you can read it; can't you? A. I can read some things on it.

* * * *

Q. You looked at it and you signed? A. I signed my name. I don't know if I looked at it.

Q. You had it in front of you when you signed your signature?

A. Sure.

Q. He didn't know whether you were reading it or not? A. I went on and signed.

Q. Your wife looked at it and signed it? A. She signed, the same as I did.

Q. You say you signed your name twice or more than twice? A. I remember signing twice.

Q. Could you have signed it three times? A. I don't remember signing it three times.

Q. Let me show you another paper writing here and ask you whether that is your signature and your wife's signature on that writing? A. Yes, that looks like it, too.

Q. Do you remember signing now? Maybe you signed three times at that time? A. No, I don't remember. I don't remember signing no three times. I remember signing twice.

Q. Had you ever seen this man before? A. Who? Mr. Robinson?

115 Q. Yes. A. I saw him twice.

Q. I mean, before you dealt with him? A. No, I never saw him before I dealt with him.

Q. You saw him twice in connection with this contract? A. Yes.

Q. Other than twice, you had never seen him before? A. Let me see. I saw him--yes, it was three times. He come out and sold me the storm windows.

Q. Was that later or before? A. Before. Everything was all right. Then he come back. Then he come back. I saw him three times.

* * * *

117 REDIRECT EXAMINATION

BY MR. ELMORE:

Q. You said on examination by Mr. Bernstein, I believe, Mr. Scott, that you had some storm windows put in by Mr. Robinson; is that right? A. Yes, sir.

Q. When was that in relation to the time that the contract which you have just seen was signed? In other words, how long before was that? A. I think that was around either the last of January or first of
118 February. I can't remember the date.

Q. When you had the storm windows put in, that was before this contract was signed, or was it after? A. That was before.

Q. Did everything work out all right, then? A. Everything worked out all right as far as I know. I had paid for those.

* * * *

MR. BERNSTEIN: If the Court please, I now move to strike the testimony into entirely collateral matter and that the only purpose of which this witness' testimony in toto can be to impeach the credibility of witnesses the plaintiff, herself, has called, which would then require going into the transactions he was involved in. No showing of combination of conspiracy, even if there were a charge of such, which there is not.

THE COURT: I deny the motion at this time.

MR. ELMORE: I have no further testimony of this witness.

(Witness was excused.)

MR. ELMORE: I would like to offer in evidence at this time, if the Court please, a certified copy of the deed of trust of record concerning the house of William W. and Florence Scott.

119 MR. PARKS: Your Honor, we have a general objection to Mr. Scott's testimony. If by chance the Court lets it in over the objection, then Mr. Scott has verified his signature on this deed of trust; is that correct?

MR. ELMORE: Yes.

MR. PARKS: So, if the Court does allow it in over our objections, then counsel stipulates that the signature of William W. Scott, as it appears on this certified deed of trust is Mr. Scott's signature and he has so testified to that.

THE COURT: Very well. You accept the offer?

MR. ELMORE: Yes, I do.

THE COURT: Very well.

THE CLERK: Plaintiff's Exhibit No. 5 in evidence.

(Thereupon, Scott Deed of Trust was marked Plaintiff's Exhibit No. 5, for identification, and was received in evidence.)

* * * *

131 MR. PARKS: * * * *

We stipulate to the following: That the plaintiff in this case, Barbara E. Hicks, signed a note in the amount of $2,450; that the note was presented to the Bank of Silver Spring; and that the net amount of $2,058 was paid by the Millrose Corporation to the Consolidated--

THE COURT: What was that amount?

MR. PARKS: $2,058 by the Bank of Silver Spring to the Consolidated Engineering and Distributing Company, out of the Millrose bank account.

That is our stipulation. That it was paid by Check No. 2490.

Now, the second stipulation--and, incidentally, Your Honor, these "in records" have been signed out by counsel for Millrose for these particular trials.

The second stipulation is what has been marked as Defendant's

132 Exhibit No. 1, for identification, in this particular case, a note dated February 15, 1955, in the amount of $2,450; which provides, "For value received, on or before 120 days after date, I promise to pay to the order of Consolidated the amount of $2,450." And it is signed by Barbara E. Hicks, who has admitted her signature on this exhibit, and endorsed with recourse to us by the Consolidated Engineering and Distributing Company, Inc.: "Pay to the order of Millrose Corporation." And carries with it the receipt from the Office of the Recorder of Deeds, dated February 16, 1955, Instrument No. 5827.

We stipulate that that note is held by the Millrose Corporation.

THE COURT: Do you agree to this stipulation?

MR. ELMORE: I agree to that, Your Honor.

THE COURT: The first one and the second one?

MR. ELMORE: Yes, Your Honor.

MR. PARKS: Your Honor, that is the Defendant Millrose's case.

* * * *

133 THE COURT: Yes.

Mr. Elmore, you had your exhibits marked for identification. I am wondering if they have been offered.

MR. ELMORE: Yes, ma'am, I have offered them.

MR. BERNSTEIN: I will assume for the record they were offered, Your Honor.

THE COURT: Then they are all admitted.

* * * *

134 MR. BERNSTEIN: If the Court please, in the case of Brent vs. Millrose, Civil Action No. 4871-55, counsel have stipulated that except with respect to the amount of the note, and the dates of the note, and the notes and the deed of trust will be put in evidence to indicate both amounts and dates--except with respect to those particulars as to amounts and dates and except with respect to such oral testimony as may be given in that case that might differ from the case of Hicks, all other testimony in the Brent case would be the same as in the Hicks case.

THE COURT: I understand by that, you intend to put your plaintiffs on?

MR. ELMORE: Yes, Your Honor. And I will offer the testimony of Mr. Scott as equally applicable to the Brent case.

THE COURT: You wish all the other testimony to be considered as stipulated that if they were called they would testify to the same thing, but you expect to put on Mr. and Mrs. Brent; is that it?

MR. ELMORE: I do. Also, I wish to recall Mr. Robinson

135 in so far as his testimony as to the Brents is concerned.

MR. BERNSTEIN: Robinson, I understood, but I thought you wouldn't call Mr. and Mrs. Brent. We understood they would testify substantially the same way, except as to the details of the note that

will be put in evidence.

MR. ELMORE: Well, I will stipulate that in the interest of saving time.

THE COURT: Well, I think it would be helpful to the Court to know what Mr. and Mrs. Brent are going to say. They may have more information than these other plaintiffs had.

MR. ELMORE: Very well, Your Honor.

May we call Mr. Brent, please? And at this time, Mrs. Brent, also.

MR. BERNSTEIN: It the Court is taking the testimony, it would be better to take the testimony of the husband out of the presence of the wife.

THE COURT: They are both plaintiffs.

MR. BERNSTEIN: In that connection, I think it might be helpful to hear them separately.

MR. ELMORE: I have no objection one way or the other.

MR. BERNSTEIN: I understand I have no right to object on their right to be here.

* * * *

136 CALVIN BRENT

was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELMORE:

Q. Please try to keep your voice as high as possible, Mr. Brent, so everyone can hear you that is concerned with this case.

Would you state to the Court your name and your address?

A. My name is Calvin Brent; my address is 5119 E Street, Southeast.

Q. Is 5119 E Street Southeast--do you own that home?

A. Yes, I do.

* * * *

137 Q. Mr. Brent, in February, 1955, did there come a time when you had an occasion to talk to somebody about repairs to your house?

A. Yes, I did.

Q. Who was it that you talked to? A. A fellow introduced himself by the name of Mr. Robinson.

* * * *

THE WITNESS: A man by the name of Mr. Robinson said he was the sales manager at Consolidated Corporation.

138 BY MR. ELMORE:

Q. And then? A. I introduced myself to him.

* * * *

THE WITNESS: I made myself known to him; and I introduced my wife to him; and he had a tablet. He said he was out there to see about putting sewer service in the house. And he went on talking about different things. And he says--after I told him name, he said he seemed to remember my name. And he got talking about my father. He said he didn't know him personally, but he had known him out in Virginia from working.

He asked did I plan to put water in. I told him, yes. He said he got signatures from everybody in the block, and that water were coming through around April. And if I signed--I says: Well, if I do sign it would be only that if and when the water passes the house, that you could have the contract of putting it in.

And he says--he went over what he would put in; and it would all be new equipment, and the price of it, and approximately what I would pay a month.

He also asked me did I owe anything on the house. At that time, I did. And he said, he would take over that note and add it to the price of what he would charge of putting it in. And it was to start 30 days

139 after they finished, after it met my approval when they finished.

BY MR. ELMORE:

Q. Did he give you something to sign? A. Yes, he did. Supposed to have been a contract. He wrote in there the specifications of the sinks and things he would put in. And the price. And he also wrote in there that no work was to begin until the service was run past

the house.

Q. Who was there at the time you talked to Mr. Robinson?

A. My wife and little baby.

Q. And this was at your house; was it? A. Yes, it was.

MR. ELMORE: For identification purposes, I offer this as Plaintiff's Exhibit.

THE COURT: Give it a separate number.

THE CLERK: Plaintiffs' Brent Exhibit No. 1, for identification.

(Plaintiffs' Brent Exhibit No. 1, was marked for identification.)

BY MR. ELMORE:

Q. I show you, Mr. Brent, a document which has been marked for identification as Plaintiffs' Brent Exhibit No. 1, and ask you whether or not you know what that is? A. Well, that was the second piece of paper. There was a white piece of paper on top that I signed. That is
140 my copy of the contract. Agreement of the contract that I was to sign.

THE COURT: Mr. Brent, it is very hard to understand you. You are talking so low.

THE WITNESS: I said, that is a copy of the white piece of paper that I signed. It was a pad he had. And I signed on the white piece of paper; was supposed to have been a contract.

THE COURT: You say he had a pad?

THE WITNESS: It seemed to be a pad, to me. Was a white piece of paper, piece of carbon, and pink paper was underneath the carbon; and this is what he give me; say was my copy of the contract.

BY MR. ELMORE:

Q. Is that your signature on that piece of paper? A. It looks like it.

Q. Do you recognize any other signatures on that paper?

A. It looks like my wife's signature on there.

Q. While you were going over this matter with Mr. Robinson, did he explain to you how you were to pay for this work to be done?

A. Yes, he did. He said that when the work was completed, that I would pay approximately $40 a month; that was 30 days after they com-
141 pleted the work.

Q. Did he say to you anything about a promissory note?

A. No, he didn't.

Q. Did he mention to you anything about a deed of trust?

A. No.

Q. Do you know what a promissory note is, Mr. Brent?

A. Well, as near as I can figure, it is probably something like a mortgage, I imagine.

Q. How much work was done on your house after you signed that contract, Mr. Brent? A. There has been no work done at all on my place.

THE COURT: Were you told by him that he had a promissory note there for you to sign?

THE WITNESS: Was that Mr. Robinson?

THE COURT: Yes.

THE WITNESS: No, I wasn't.

THE COURT: Did he tell you that he had a deed of trust there for you to sign?

THE WITNESS: No. He said contract. As I explained to him that I wouldn't sign anything unless it was a contract for him to do the work when the water passes the house, that is, sewer and water. He said that would be all right, as long as he had the signature to help people get water in the places up there.

* * * *

142 THE COURT: May I see this Exhibit 1 that you marked?

This is the provision you had reference to: "This work is not to start until sewer and water lines are being run in street in front of the house."

THE WITNESS: That is correct.

BY MR. ELMORE:

Q. Mr. Brent, did your wife take part in this conversation

that you and Mr. Robinson engaged in? A. She was there. She was bathing the baby; and we were getting ready to take my sister-in-law to the hospital to see her husband, when Mr. Robinson knocked on the door. She left bathing the baby. She did look at the part Mr. Robinson

143 wrote in there, sewer and water passing the house, and no work being done, and specifications, the size of the sink, and bath room, and things that he was supposed to put in.

Q. How far did you go in school, Mr. Brent? A. I went to sixth grade.

Q. Do you read pretty well? A. Well, depends on what it is, I imagine. My understanding of all I read--I don't have such good understanding of it.

* * * *

Q. Mr. Brent, did you read this contract aloud to your wife, or did she read it aloud to you? A. No, I didn't; and she didn't read it out to me, either.

Q. Did there come a time when you went to the Recorder of Deeds Office to look at some instruments? A. Yes, I did.

Q. Did you come across an instrument which appeared to have your name on it? A. Yes, I did.

144 Q. Do you remember what that was? A. That was a photostatic copy of, I believe, a promissory note and a deed of trust, I think is what it was.

Q. Do you remember having signed a deed of trust? A. No, I don't remember.

Q. In connection with this improvement work? A. No, I don't.

Q. Do you remember having signed a promissory note in connection with this work that Mr. Robinson came to see you about? A. No. I don't remember signing any promissory note.

MR. ELMORE: If the Court please, I offer this as Brent Plaintiffs' Exhibit No. 2.

THE CLERK: Plaintiffs Brent Exhibit No. 2, for identification.

(Thereupon, document was marked

Plaintiffs Brent Exhibit No. 2, for identification.)

BY MR. ELMORE:

Q. I show you, Mr. Brent, a paper which has been identified as Plaintiffs' Exhibit No. 2, and ask you to take a look and see if you see your signature on that piece of paper? A. That looks like my signature.

145 Q. Do you see your wife's signature there? A. Yes, I do.

Q. Have you ever seen that before? A. I can't say that I have. I am quite sure I haven't seen that.

MR. ELMORE: At this time, if the Court please, I offer the promissory note known as Plaintiffs Brent Exhibit No. 2, into evidence.

MR. BERNSTEIN: In making the offer, do you admit the genuineness of the signature?

MR. ELMORE: Yes.

MR. BERNSTEIN: You admit it is his signature and his wife's?

MR. ELMORE: Yes.

MR. BERNSTEIN: No objection to the offer.

THE COURT: Admitted.

THE CLERK: Plaintiffs Brent Exhibit No. 2.

* * * *

146 CROSS EXAMINATION

BY MR. BERNSTEIN:

Q. Mr. Brent, did I understand you to say when you went to the Recorder of Deeds Office you saw a photostat of a promissory note there? A. That is what I think it would be, yes.

Q. Was that a photostat of this note? A. Looked like it, yes.

Q. When you saw this photostat of this promissory note, you recognized it as a promissory note; did you not? A. Did I recognize it as a promissory note?

Q. Yes. A. I was told that it was a promissory note down there.

Q. You had no trouble reading it down there? A. Had no

trouble reading it. When my wife was with me, yes.

THE COURT: Take it and let him look at it.

BY MR. BERNSTEIN:

Q. Can you read that?

THE COURT: Do you see anything on there that says it is a promissory note? Do you see any printing on there that says it is a promissory note?

147 THE WITNESS: No, I don't.

BY MR. BERNSTEIN:

Q. Can you read the note? A. I imagine I can read some of it here.

Q. Suppose you read what you can. A. "For value received, we promise to pay on or before 120 . . ."--

Q. What did you say after "value received"? A. "We promise . . ."

Q. Go ahead. A. " . . . to pay on or before 120 days . . ."

Q. We promise to pay--you know what that means; don't you? A. We promise to pay?

Q. Yes. A. If I owe you, I promise--that is, if I signed that, I promised to pay it.

Q. You were able to read that just as well in 1955 as you are today; weren't you? A. If I had seen that.

Q. If you had seen it? A. If I had seen it, yes.

* * * *

149 Q. Knowing your signature is on this note, don't you know you signed other papers either then or on some other occasion? A. I could have. I was getting ready to go to the hospital.

* * * *

151 Q. In other words, if you did sign your name a second or third time on that occasion, you have no present memory of it; is that correct? A. That is correct.

Q. And you don't remember any other circumstances surrounding it; is that correct? A. Other than Mr. Robinson coming to the

house to get me to sign the contract to put the water and heat in my house.

Q. If you did sign a second or third paper on that occasion, you have no memory of the details of your signing it or what was said with respect to your signing it; is that correct? A. That is correct.

Q. Did you read this top sheet that was on top of this pink sheet before you signed? A. I was reading it. Mr. Robinson kept talking, as I say. He talked about the baby; talked about my father. He just kept talking the whole time he was there.

Q. Did you read it? A. I tried to read it, yes.

Q. Did Mr. Robinson make any effort to stop you from reading any of the papers you signed or had to do with that day? A. That I can remember, no.

152 Q. He didn't do anything to stop you from reading it? A. As far as I can remember it, he didn't.

* * * *

153 Q. Well, you, apparently, Mr. Brent, do not have too good a memory, do you, if you can't remember signing this paper, but, yet, you recognize this as your signature? A. It is possible.

Q. Incidentally, had you ever done any business with Mr. Robinson before this occasion? A. No, I didn't.

* * * *

Q. And you didn't know whether he was reliable or unreliable; did you? A. Well, a person in business is supposed to be reliable.

* * * *

154 Q. How many times did you see Robinson before you signed this contract? A. I believe that was the first time.

* * * *

THE COURT: Is the original deed of trust here? I thought maybe after it was recorded somebody had gotten it back.

MR. BERNSTEIN: We don't have it, Your Honor.

MR. ELMORE: No, Your Honor.

MR. BERNSTEIN: We have the Recorder's receipt on the note,

as Your Honor may have observed.

THE COURT: I was interested in seeing the original.

MR. BERNSTEIN: We will stipulate for counsel's sake that it was recorded in--whatever counsel has here in his records.

THE COURT: Is it typed or in longhand?

155 MR. ELMORE: It is a typed copy, Your Honor.

MR. BERNSTEIN: We will stipulate upon plaintiffs' offer that the deed of trust in this case is recorded in Liber 10366 at Folio 581, as Instrument No. 5423, which is a deed of trust dated February 14, 1955.

THE COURT: What is the Liber number?

MR. ELMORE: 10366, Folio 581.

THE COURT: And the date was February what?

MR. ELMORE: Fourteenth.

MR. BERNSTEIN: Fourteenth, Your Honor.

REDIRECT EXAMINATION

BY MR. ELMORE:

Q. Mr. Brent, on cross examination I believe you said that Mr. Robinson talked to you all the while, while he was in your home, about this contract? A. Yes, he did.

Q. Did that interfere in any way with your consideration of the contents of that contract?

* * * *

156 THE WITNESS: Well, that, and going to the hospital to see my brother-in-law. It probably did, yes.

* * * *

MR. BERNSTEIN: I am willing to stipulate that the wife, that is, the plaintiff Sarah Brent, will testify substantially to the same effect.

THE COURT: Very well.

As I understand it, all the other testimony in the other case is by stipulation a part of the testimony in this case; is that right?

MR. ELMORE: Yes, Your Honor.

157 MR. BERNSTEIN: Except in so far as other testimony is adduced here, because I understood he wanted to call Mr. Robinson.

* * * *

LESTER J. ROBINSON

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. ELMORE:

Q. Mr. Robinson, I ask you whether you can identify this document known as Plaintiffs Brent Exhibit No. 1? A. Yes, sir. This is a copy of a contract that I entered into with the Brents.

Q. Do you recall seeing the Brents? Do you have an independent recollection, Mr. Robinson? A. Yes, sir, I do.

Q. Would you state to the Court what you recall having transpired when you saw the Brents, and when was the date, to the best of your recollection? A. I think it was the latter part of January when I first saw them; and at that time, Mr. Brent was doing some work on

158 his house. And I came back and saw them at another date, at which time I entered into the contract here, where we would do certain work at the property; and we were to arrange financing for them in the form of a permanent first trust, and pay off the first trust that they had existing on the property. And it is my recollection that the deal amounted to approximately $3,000 in constructural work; and I think they owed $800 at that time, to be consolidated into a first trust of $3800, with payments not to exceed $40 a month.

Q. When were the payments to begin? A. Thirty days after our work was completed.

Q. Did you explain these things to Mr. Brent and Mrs. Brent? A. Yes, sir, I did.

Q. Now, was any mention of a note or deed of trust made at that time? A. We got the usual H Form signed in that case, the same as in every other case; and they were told that was to cover interim financing.

MR. BERNSTEIN: You say they were told that was to cover interim financing?

THE WITNESS: Yes.

BY MR. ELMORE:

Q. Were they told that that was a deed of trust and promissory
159 note, to the best of your recollection? A. I don't recall that they were.

Q. You say you used the same form that you identified before, this morning? A. That is correct, yes, sir.

Q. Do you recall whether or not you opened that form at the time with the Brents? A. I don't recall that I did or didn't, no, sir.

MR. ELMORE: I have no further questions.

CROSS EXAMINATION

BY MR. BERNSTEIN:

Q. Mr. Robinson, when counsel refers to opening the form, this H Form, the note, is right on the fact sheet; isn't it? A. That is right, yes, sir.

Q. Did Mr. and Mrs. Brent sign a note on the face sheet of that form? A. Yes, sir.

Q. And is this the note, sir? I hand you Plaintiffs Brent Exhibit No. 2. Did they sign this note on the second occasion you saw them? A. I believe so, sir. I think this is the note.

Q. And this note was right out of the first sheet? A. That is part of the entire form, correct.

160 Q. So you saw them on at least two occasions, not one? A. Yes, sir.

Q. I will ask you the same question that was asked you about plaintiff's counsel in the prior case this morning, and which I asked you on cross examination this morning: Did you generally, when you went to see people, volunteer to them that they were signing a note and a deed of trust which was for interim financing? A. It was not voluntarily given. In other words, if I was asked a specific question, what is this, they were told what it was. And as a general thing, when the

papers were given to them to sign, if they said, what is this, why am I signing this, they were told, that is for interim financing.

Q. Did you make any effort in presenting papers for signature to the Brents to cover up or conceal any paper? A. No, sir.

Q. Or put your hand over it so they couldn't read it? A. No, sir.

Q. Did you make any effort generally to divert customers' attention by putting your hand over or folding the thing over in some way so they couldn't read? A. No, sir.

Q. Did Mr. Brent ask you any questions, as you recall, about this transaction? A. Yes. There were several things talked about.

161 In other words, he was doing some work on the property which had to be finished in order for our work to get started. And was a question about when he would be finished and when we would start and when the sewer was coming in, and many things of that sort.

* * * *

163 THE COURT: Now, you say that you didn't volunteer to them any information that you were having a note or a deed signed?

THE WITNESS: Yes, ma'am.

THE COURT: But that you did tell them that this signature was for interim financing?

THE WITNESS: Yes, ma'am.

THE COURT: Well, did you communicate to them what you meant by interim financing?

THE WITNESS: No, ma'am, I don't think I was ever asked that question. I think that the difficulty is arising here is one--

THE COURT: Now don't tell me that. I didn't ask you that, what the difficulty is.

When you had this sheet of paper here that is in your handwrit-

164 ing, that is to say, Exhibit No. 1, where was this sheet with reference to this sheet that had this note on it?

THE WITNESS: I carried a brief case, and that particular sheet was part of a pad of contracts.

THE COURT: So that this sheet was entirely separate from all the others; is that right?

THE WITNESS: Yes, ma'am. Yes, ma'am. Then there was a folder--well, similar in size to the top of that form.

THE COURT: To this H--

THE WITNESS: I am talking about another folder, now, not an H Form. There was another folder about the size of the top of that sheet down to where the note goes that was bound with a top, and that was an FHA Form. That, I carried. Then, in that FHA form, the first sheet of that was the application, the second sheet was the note. They signed both of those. This form, the H Form, was carried separately, several of them together in a bag. And I took those out at the time I took out the other papers. All the things that had to be signed, I took out of my bag at one time.

THE COURT: When you were in their presence, you didn't fill out anything on this H Form?

THE WITNESS: I never filled out anything on that H, whether in their presence or any place else.

165 THE COURT: The H Form included the note and the deed of trust?

THE WITNESS: Yes, ma'am.

THE COURT: None of that was filled out. You just got their signature on whatever paper you wanted to?

THE WITNESS: That is all.

THE COURT: And this form here has up at the top, "Credit Application."

THE WITNESS: Yes, ma'am.

THE COURT: Has it not?

THE WITNESS: Yes, ma'am.

THE COURT: And then it has, "Employment or Business," has it not?

THE WITNESS: Yes, ma'am.

THE COURT: In large letters?

THE WITNESS: Yes, ma'am.

THE COURT: And then it has, "References," in large letters?

THE WITNESS: Yes, ma'am.

THE COURT: And then, "Debts" in large letters; and then, "Property to be Improved," in large letters.

THE WITNESS: Yes.

THE COURT: When it comes to the "Promissory Note," you don't have anything to designate what it is; is that correct?

166 THE WITNESS: That is correct.

THE COURT: Then below that, you have the "Borrower's Completion Certificate," in large letters.

THE WITNESS: Yes, ma'am.

THE COURT: And then, "Notice to the Borrower," in large letters.

THE WITNESS: (Witness nods assent.)

THE COURT: But there is nothing in large letters on this part that constitutes the deed of trust to indicate what it is?

THE WITNESS: No, ma'am.

MR. BERNSTEIN: In view of the Court's questions, may I inquire?

THE COURT: Yes.

BY MR. BERNSTEIN:

Q. When you had them sign this note, on the H Form, and the deed of trust, did you tell them, as you testified in the Hicks case, that this would be a lien on their property? A. In this case, I don't recall.

Q. Did you do it generally? A. As a general thing, yes.

THE COURT: As a general thing, when did you tell them it would be a lien? This man said you weren't even to begin the work until this water had been put out in the street.

167 THE WITNESS: I don't recall that they ever were told; and I didn't know when it would be a lien on that property.

THE COURT: Do you remember discussing anything with them other than that this was a contract for improvements on their house?

THE WITNESS: Yes, ma'am. We talked about that first trust that had to be paid off and a new trust put on. Talked about the terms of it.

THE COURT: That was something in the future?

THE WITNESS: All contemplated the work being done, yes, ma'am.

THE COURT: All right.

MR. ELMORE: May I ask one more question, Your Honor?

THE COURT: All right.

MR. ELMORE: I take it, Mr. Robinson, that you visited the Brent house alone? You didn't have anybody with you; is that right?

THE WITNESS: No, I don't recall having anybody with me, no, sir.

MR. ELMORE: Was Louise Green with you?

THE WITNESS: Oh, no.

MR. ELMORE: You knew her?

THE WITNESS: Yes, sir.

* * * *

168 MR. ELMORE: That will conclude the plaintiffs Brents' case, if the Court please.

* * * *

MR. BERNSTEIN: We have the same stipulation on the in record, except with respect to dates and amounts. It is stipulated between counsel, as in the Hicks case, that with respect to the Brent case, the Brent case was brought in by Consolidated to the Bank of Silver Spring on February 14, 1955, and the Bank of Silver Spring drew against the account of Millrose to pay for the note in the sum of $2520

169 for a note with a face amount of $3,000, for a period of 120 days.

And it is further stipulated, as in Hicks, that the Brent note is still held by Millrose.

MR. ELMORE: That is so, if the Court please.

* * * *

[Filed Aug. 26, 1958]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVIN P. BRENT, et al	:	
Plaintiffs	:	
vs.	:	Civil Action No. 4871-55
CONSOLIDATED ENGINEERING AND DISTRIBUTING COMPANY INC., et al	:	
Defendants	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming on for hearing at this term of Court upon the plaintiffs' complaint to Cancel Forged and Fraudulent Deed of Trust and Accompanying Installment (Promissory Note), and upon consideration of the testimony adduced herein, the stipulation of counsel for the parties hereto the Court finds as a fact that:

1. Plaintiffs are the owners and occupants of premises 5119 "E" Street, S.E., Washington, D.C., designated as Lot 6 in Square 5316.

2. Plaintiffs in February, 1955, signed a form contract presented to them by defendant Consolidated Engineering and Distributing Company of America, Inc., through its agent and salesman, Lester Robinson. Said defendant is hereinafter called "Consolidated".

3. Said form contract was, at the blank spaces thereof, filled in by said Lester Robinson and provided that Consolidated would install in premises 5119 "E" Street, S.E., bath and kitchen plumbing and water and sewer lines, and that plaintiffs would pay Consolidated when such work was completed, the sum of $3,000.00 by their promissory note in that amount payable in monthly installments, such note to be secured by their deed of trust on said real estate.

4. That Lester Robinson, salesman and agent of Consolidated orally represented to plaintiffs that they were to pay no money until the work was completed, when they would make monthly payments on a $3,000.00 note which they would make.

5. That at the time of the signing of the aforesaid contract Lester Robinson also procured the signatures of plaintiffs to a blank promissory note form and a blank deed of trust form, both of which are a part of a four page letter-size paper known to salesmen of Consolidated as an "H Form". The "H Form" consists of two sheets which may be separated by means of tearing along a line of perforations at the point where the sheets are joined. Page one is filled with printing and blanks to be filled in. Every section of page one is labelled except the section which constitutes the promissory note form. The uppermost heading on the page, in bold face type, is "Credit Application". Below that, the headings are: "Employment or Business", "References", "Debts", "Property To Be Improved", "Borrower's Completion Certificate", and "Notice to Borrower". Only the note form is unlabelled although enclosed by lines or a "box". Page two, which is on the back of page one, is blank, except for an endorsement form which is located on the back of the note. On the third page is the title "Deed of Trust" and the usual form for notarial certification. The fourth page of the form is a trust deed, which is not so labelled anywhere on its face.

6. That the "H Form" was compiled and printed at the direction of Sam Lieberman, president of Consolidated. That use of said form without a full explanation of its contents is likely to deceive persons of the intelligence, business experience and education of plaintiffs and is not likely to indicate to such persons that they are signing a blank promissory note and a blank deed of trust.

7. That Lester Robinson, agent of Consolidated, was instructed by Sam Lieberman, president of Consolidated, that the note and deed of trust portions of the "H Form" must be signed in blank by the customer and that the inside of the "H Form" should not be shown to the customer. He was further instructed not to volunteer any information concerning the "H Form", and if he were asked about it by the customer he should reply that it was for "interim financing".

8. Said "H Form" was designed by Consolidated for the purpose of tricking or deceiving its customers into believing their liability to pay Consolidated would accrue only upon completion of the work specified in their contract.

9. That Lester Robinson did not tell plaintiffs that they were signing a blank note and deed of trust, but lead them to believe through deceptive use of the "H Form" and by Consolidated's instructions as set forth in finding No. 7 above, that they were signing only a contract providing for payment of $3,000.00 after completion of the work, in monthly installments.

10. That plaintiff Calvin Brent went to school through the sixth grade and although he is able to read and write, did not understand that he was making a note and deed of trust. There was no other person available upon whom plaintiffs could call to read the papers they signed. Plaintiff, Sarah Brent, also did not understand that she was signing a blank note and deed of trust.

11. That plaintiffs did not intend to sign the note and deed of trust but only intended to sign the contract; that plaintiffs signed the note held by defendant Millrose Corporation as a result of fraud practiced upon them by Consolidated.

12. That plaintiffs were not negligent in signing the blank note and deed of trust.

13. That no other than Lester Robinson and plaintiffs were present when plaintiffs signed the aforesaid blank note and deed of trust; that the notarial certificate appearing on the aforesaid note and deed of trust, bearing the signature and seal of Louise Green, a notary public and employee of Consolidated, is false in that said notary was not present at the signing of said instrument and plaintiffs did not acknowledge the same to be their act and deed.

14. No work as called for by the contract of February, 1955 was done to plaintiffs' home.

15. The deed of trust which was signed in blank by plaintiffs was later filled in by Consolidated to provide by its terms a conveyance by plaintiffs of the aforesaid real estate to Jacob Sandler and Lucien Hilmer as trustees to secure Consolidated in payment of the note which was also later filled in by Consolidated as a $3,000.00 note payable to Consolidated in 120 days after its date of February 14, 1955. Said deed of trust was recorded in liber 10366 at folio 581 of the land records of the District of Columbia.

16. That the note for $3,000.00 was endorsed by the defendant Consolidated to the defendant Millrose and transferred through the Bank of Silver Spring, Maryland, for the sum of $2,528.00 on February 14, 1955; that said Bank paid Consolidated out of funds belonging to defendant Millrose which had been deposited in said Bank.

17. That the plaintiffs withdrew at the outset of the trial the claim for damages against the defendant, Consolidated.

Conclusions of Law

1. The promissory note signed by plaintiffs, dated February 14, 1955, payable to the order of Consolidated in the sum of $3,000.00 on or before 120 days from its date, was procured by fraud in the execution; and because plaintiffs lacked intent to make the note and were not guilty of negligence in doing so, the said note is void and unenforceable by defendant Millrose Corporation.

2. The deed of trust dated February 14, 1955, purporting to be a conveyance by plaintiffs to defendants Sandler and Hilmer, as trustees, of plaintiffs' home known as Lot 6 in Square 5316 and recorded in liber 10366 at folio 581, was obtained from plaintiffs by fraud in the execution and since plaintiffs did not intend to sign such a deed of trust and because they were not negligent in signing the same, said deed of trust is void and plaintiffs are entitled to a cancellation thereof.

Burnita Shelton Matthews
Judge

[Filed September 22, 1958]

JUDGMENT

This cause having come on for trial in open court, and upon consideration of the pleadings, testimony and evidence adduced at such trial and argument of counsel for the respective parties, it is this 22nd day of September 1958,

ORDERED, ADJUDGED, and DECREED as follows:

1. The promissory note signed by plaintiff to the order of Consolidated Engineering and Distributing Company of America, Inc., dated February 14, 1955, in the sum of Three Thousand ($3, 000. 00) Dollars, which note was endorsed by the payee to the order of defendant Millrose Corporation, is void and unenforceable as to plaintiffs.

2. The deed of trust signed by plaintiffs dated February 14, 1955, purporting to convey to defendants Jacob Sandler and Lucien Hilmer, as trustees, real estate situate in the District of Columbia, known as lot 6 in square 5316, and recorded in liber 10366 at folio 581, is void and the same be and it is hereby cancelled and vacated.

3. The counterclaim of defendant Millrose Corporation be and the same is hereby dismissed.

/s/ Burnita Shelton Matthews
Judge

NOTICE

TO: George B. Parks, Esq.
Attorney for Defendant Millrose Corp.
730 Fifth St. N. W.
Washington 1, D. C.

Please be advised that the foregoing and attached judgment will be presented by the undersigned to the Honorable Burnita Shelton Matthews, Judge, United States District Court for the District of Columbia in the Chambers of Judge Matthews on September 22, 1958, at 9:45 a. m., or as soon thereafter as counsel can be heard in the matter of the presentment of such judgment for signature of such court.

/s/ S. Churchill Elmore

[Certificate of Service]

[Filed Oct. 21, 1958]

NOTICE OF APPEAL

Notice is hereby given this 21st day of October, 1958, that the defendant Millrose Corporation hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court

entered on the 22nd day of September, 1958 in favor of Calvin P. Brent against said Millrose Corporation.

/s/ George B. Parks
Attorney for Millrose Corp.

[Filed Aug. 26, 1958]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BARBARA E. HICKS	:	
Plaintiff	:	
vs.	:	Civil Action No. 4873-55
CONSOLIDATED ENGINEERING & DISTRIBUTING CO., INC., et al	:	
Defendants	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming on for hearing at this term of Court upon the plaintiff's complaint to Cancel Forged and Fraudulent Deed of Trust and Accompanying Installment (Promissory) Note, and upon consideration of the testimony adduced herein, the stipulations of counsel for the parties hereto the Court finds as a fact that:

1. Plaintiff is the owner and occupant of premises 5220 "E" Street, S. E., Washington, D. C., designated as Lots 28 and 29 in Square 5316.

2. Plaintiff in February, 1955, signed a form contract presented to her by defendant Consolidated Engineering and Distributing Company of America, Inc., through its agent and salesman, Lester Robinson. Said defendant is hereinafter called "Consolidated".

3. Said form contract was, at the blank spaces thereof, filled in by said Lester Robinson and provided for plumbing to be installed, for water and sewer lines to be connected and installed, and for other improvements in and to said real estate and that upon completion of said work, plaintiff was to pay Consolidated the sum of $2,450.00 by her promissory note in such amount payable in monthly installments.

4. Lester Robinson had visited plaintiff at her home about a week prior to February 12, 1955, to solicit such home improvement work but on that occasion plaintiff was alone and wished the presence of her adult children when a contract was presented to her and therefore requested Robinson to return at a later date.

5. On February 12, 1955, there were present at plaintiff's home, said Lester Robinson, plaintiff and several of plaintiff's adult children, among whom was Julia Robertson. Lester Robinson orally represented to plaintiff and her children that plaintiff, by the terms of the contract, was to pay nothing until the work on her house was completed and at that time she would commence making monthly installment payments on her note which she would make in the principal sum of $2, 450. 00,and plaintiff believed such statement.

6. That at the time of the signing of the aforesaid contract, Lester Robinson also procured the signature of plaintiff to a blank promissory note form and a blank deed of trust form, both of which are part of a four page letter-size paper known to salesmen of Consolidated as an "H Form". The "H Form" consists of two sheets which may be separated by means of tearing along a line of perforations at the point where the sheets are joined. Page one is filled with printing and blanks to be filled in. Every section of page one is labelled except the section which constitutes the promissory note form. The uppermost heading on the page, in bold face type, is "Credit Application". Below that, the headings are: "Employment or Business", "References", "Debts". "Property To Be Improved", "Borrower's Completion Certificate", and "Notice to Borrower". Only the note form is unlabelled although enclosed by lines or a "box". Page two, which is on the back of page one, is blank, except for an endorsement form which is located on the back of the note. On the third page is the title "Deed of Trust" and the usual form for notarial certification. The fourth page of the form is a trust deed, which is not so labelled anywhere on its face.

7. That the "H Form" was compiled and printed at the direction of Sam Lieberman, president of Consolidated. That use of said form without a full explanation of its contents is likely to deceive persons of

the intelligence, business experience and education of plaintiff and is not likely to indicate to such persons that they are signing a blank promissory note and a blank deed of trust.

8. That Lester Robinson, agent of Consolidated, was instructed by Sam Lieberman, president of Consolidated, that the note and deed of trust portions of the "H Form" must be signed in blank by the customer and that the inside of the "H Form" should not be shown to the customer. He was further instructed not to volunteer any information concerning the "H Form", and if he were asked about it by the customer he should reply that it was for "interim financing."

9. Said "H Form" was designed by Consolidated for the purpose of tricking or deceiving its customers into believing their liability to pay Consolidated would accrue only upon completion of the work specified in their contract.

10. That said Lester Robinson did not tell plaintiff or her children that plaintiff was signing a blank note and deed of trust, but lead her to believe, through use of the "H Form" and the instructions of Consolidated to its salesmen as set forth in finding No. 8 herein, that plaintiff was signing only a contract providing for payment of $2,450.00, after completion of the work, in monthly installments.

11. That plaintiff is a poorly read colored person, she having had only four years of schooling. She was unable to read and understand the contract and had her daughter, Julia Robertson, read it for her and said daughter advised plaintiff that it was all right to sign the contract. However, neither plaintiff nor her children understood that plaintiff was signing a blank note and deed of trust.

12. Plaintiff did all she could reasonably do under the circumstances to protect herself when she arranged for her daughter to read the contract before she signed it.

13. That plaintiff was not negligent in signing the blank note and deed of trust.

14. The deed of trust which was signed in blank by plaintiff, was later filled in by Consolidated to provide by its terms a conveyance by

plaintiff of the aforesaid real estate to Jacob Sandler and Lucien Hilmer as trustees to secure Consolidated in payment of the note which was also later filled in by Consolidated as a $2,450.00 note payable to Consolidated in 120 days after its date of February 15, 1955. Said deed of trust was recorded in liber 10368 at folio 481, one of the District of Columbia land records.

15. Said deed of trust and note contain a notarial certificate of Louise Green who was an employee of Consolidated. The deed of trust certificate is false in that said notary was not present at the signing of the trust deed and plaintiff did not acknowledge the same to be her act. The certificate on the note is false since the deed of trust was signed in blank and in fact did not refer to any note until filled in without authority.

16. The work called for by the contract of February, 1955, between plaintiff and Consolidated was not completed.

17. That the note for $2,450.00 was endorsed by defendant, Consolidated Engineering & Distributing Company of America, Inc., to the defendant, Millrose Corporation and transferred through the Bank of Silver Spring, Maryland, for the sum of $2,058.00, on February 16, 1955; that said bank paid Consolidated out of funds belonging to defendant Millrose which had been deposited in said bank.

18. The plaintiff withdrew at the outset of the trial the claim for damages against the defendant, Consolidated.

Conclusions of Law

1. The promissory note signed by plaintiff, dated February 15, 1955, payable to the order of Consolidated in the sum of $2,450.00 on or before 120 days from its date, was procured by fraud in the execution; and because plaintiff lacked intent to make the note and was not guilty of negligence in doing so, the said note is void and unenforceable by defendant Millrose Corporation.

2. The deed of trust dated February 15, 1955 purporting to be a conveyance by plaintiff to defendants Sandler and Hilmer, as trustees, of plaintiff's home known as Lots 28 and 29 in Square 5316 and recorded in liber 10368 at folio 481 was obtained from plaintiff by fraud in the

execution and since plaintiff did not intend to sign a deed of trust and because she was not negligent in signing the same, said deed of trust is void and plaintiff is entitled to a cancellation thereof.

/s/ Burnita Shelton Matthews
Judge

[Filed September 22, 1958]

JUDGMENT

This cause having come on for trial in open court, and upon consideration of the pleadings, testimony and evidence adduced at such trial and argument of counsel for the respective parties, it is this 22nd day of September, 1958,

ORDERED, ADJUDGED, and DECREED as follows:

1. The promissory note signed by plaintiff to the order of Consolidated Engineering & Distributing Company of America, Inc., dated February 15, 1955 in the sum of Two Thousand Four Hundred Fifty ($2,450.00) Dollars, which note was endorsed by the payee to the order of defendant Millrose Corporation, is void and unenforceable as to plaintiff.

2. The deed of trust signed by plaintiff dated February 15, 1955 purporting to convey to defendants Jacob Sandler and Lucien Hilmer as trustees, real estate situate in the District of Columbia known as lots 28 and 29 in square 5316, and recorded in liber 10368 at folio 481 is void and the same be and it is hereby cancelled and vacated.

3. The counterclaim of defendant Millrose Corporation be and the same is hereby dismissed.

/s/ Burnita Shelton Matthews
Judge

NOTICE

To: George B. Parks, Esq.
Attorney for Defendant Millrose Corp.
730 Fifth St. N.W.
Washington 1, D. C.

Please be advised that the foregoing and attached judgment will be presented by the undersigned to the Honorable Burnita Shelton Matthews,

Judge, United States District Court for the District of Columbia in the Chambers of Judge Matthews on September 22, 1958, at 9:45 a.m., or as soon thereafter as counsel can be heard in the matter of the presentment of such judgment for signature of such court.

/s/ S. Churchill Elmore

[Certificate of Service]

[Filed Oct. 21, 1958]

NOTICE OF APPEAL

Notice is hereby given this 21st day of October, 1958, that the defendant Millrose Corporation hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 22nd day of September, 1958, in favor of Barbara E. Hicks against said Millrose Corporation.

/s/ George B. Parks
Attorney for Millrose Corp.

[Certificate of Service]

States Court of Appeals
For the
strict of Columbia Circuit

ED MAY 14 1959

Joseph W. Stewart
CLERK

BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,872

MILLROSE CORPORATION,
Appellant,

v.

CALVIN P. BRENT, et al.,
Appellees.

No. 14,873

MILLROSE CORPORATION,
Appellant,

v.

BARBARA E. HICKS,
Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

S. CHURCHILL ELMORE
1331 G Street, N. W.
Washington 5, D. C.
Attorney for Appellees

Washington, D. C. ROBERT I. THIEL Printer EX 3-0625

STATEMENT OF QUESTION PRESENTED

Is a signer of an instrument liable to a holder, in due course or otherwise, if he, without negligence, attaches his signature to a paper while assuming it to be one of a different character due to fraud practiced upon him in the execution thereof?

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UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

No. 14,872

MILLROSE CORPORATION,

Appellant,

v.

CALVIN P. BRENT, et al.,

Appellees.

No. 14,873

MILLROSE CORPORATION,

Appellant,

v.

BARBARA E. HICKS,

Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

COUNTER-STATEMENT OF THE CASE

These cases arise out of the same facts and circumstances which led to the forgery conviction sustained by this Court in Lieberman v. United States, 102 U.S. App. D.C. 310, 253 F. 2d 46. Appellees are three of a multitude of people the same Lieberman and his associates

tricked into signing blank notes and deeds of trust by leading them to believe that they were signing contracts for home improvements. (J.A. 39, 47)

The facts of these cases are for all practical purposes the facts of the Lieberman forgery conviction; and the evidence in these cases supports the same conclusions of fact reached by this Court in sustaining Lieberman's conviction, at page 47 of 102 U.S. App. D.C.: "Here deception is amply proved by the per se deceptive nature of the form involved and the fact that appellant instructed his salesmen to conceal revealing parts of the form; to decline to volunteer explanations as to the nature of the form, and to obtain the signatures in blank."

Here Lieberman successfully employed the same ingenious "H" Form (Plntf. Hicks' Exhibit No. 2 rec.), and the same artful instructions to deceive appellees. (J.A. 39, 26, 27, 71, 72, Brent Finding No. 9, J.A. 79, Hicks' Finding No. 10, J.A. 84).

In this light, it is not necessary to discuss certain evidence emphasized by appellant tending to show that appellees were not deceived by more obvious means, or that they could not explain precisely how they were tricked, for as this Court said at 102 U.S. App. D.C. 312, "His devises were so artful that his customers had no way of being aware of what they signed."

Appellees Brent signed the "H" Form and the integrally disguised note and deed of trust at the instance of one Robinson acting for Lieberman's corporation. (J.A. 31, 32, 71) He represented that they were signing a contract for home improvements, saying, as the contract provided, that they were to pay nothing until the completion of the work. (J.A. 71) The Brents never saw the inside pages of the "H" Form, were offered no explanation of its true nature, and their signatures were obtained in blank. (J.A. 65, 66, 71, 72, 73, 74, 75) Calvin Brent had only a 6th grade education, and while able to read and write, he did not know that he was making a note or deed of trust. Neither did his wife.

No one else was present except their infant child. The note and trust deed were filled in later out of their presence and a false acknowledgment affixed by a notary public they never saw. (J.A. 74, 46, 47, 76) Of course, no work as called for by the contract was ever done. (J.A. 65) Later, a deed of trust bearing the date of the Brents' contract conveying their home was recorded and which recited the note of the appellees Brent to the order of Lieberman's corporation for $3,000 payable in 120 days.

The same pattern was followed in the case of appellee Hicks, except for such variation as was introduced by her more meagre ability to read. She asked the salesman Robinson to come at a time when her children would be present in order that she could understand the terms of the contract to be presented. (J.A. 21) Robinson returned at a later date when the appellee's children were present and explained to appellee and her children the provisions of the contract. (J.A. 22-26, 32, 33). Appellee, being unable to read well, had her daughter read to her the contents of the contract and then signed it. (J.A. 22, 23) Robinson also procured her signature to the blank note and deed of trust portions of the "H" Form without her realization of the nature of the paper and without his explanation of it other than as a paper concerning the work to be done. (J.A. 26, 33, 37) Neither the appellee Hicks nor her daughter understood that appellee was signing a note and deed of trust but understood that, as the contract provided, payments on a $2,450 note in monthly installments would be made on completion of the work. (J.A. 23, 24, 25, 33)

The appellee Hicks is a poorly read and poorly educated colored woman with only four years of schooling. The Court found that she did all she could do to protect herself when she arranged for her daughter to be present at the signing of the contract.

The note and deed of trust were later filled in by Lieberman's company to provide for the payment of $2,450 within 120 days after date.

(J.A. 47, deft. Millrose Ex. No. 1, rec.) The work as called for by the contract was never finished. (J.A. 48)

As in the case of the Brents, a deed of trust was recorded shortly after appellee signed the contract, the trust deed bearing the date of the contract, and conveyed appellee's home and recited her note to Lieberman's company for $2,450 payable in 120 days.

Both the Brents and the Hicks notes were later purchased by the appellant. The trial court held that neither appellee intended to make a note or deed of trust but did so only by reason of fraud practised upon them. The Court further found that neither appellee was negligent in signing the instruments and accordingly ruled that the notes in the hands of appellant are unenforceable.

SUMMARY OF ARGUMENT

If a person is induced by fraud to sign a paper, the nature of which is not known to him, he is not liable thereon, even to a holder in due course, if he is free from negligence in signing it, since there must be an assent to be bound by the paper, and fraud in the execution of an instrument in such circumstances constitutes a real defense.

The question of negligence of a signer of a paper is one for the trier of facts and such finding shall not be set aside unless clearly erroneous.

ARGUMENT

I. IF WITHOUT NEGLIGENCE ON HIS PART, A SIGNER ATTACHES HIS SIGNATURE TO A PAPER ASSUMING IT TO BE A PAPER OF A DIFFERENT CHARACTER, THE PAPER IS VOID

Appellees submit that the appellant in its brief has misconceived the point of these cases. It assumes that in both cases the appellees were "makers" of the notes in question and that the matter herein involved is merely that of the conscious signing of blank notes which were later filled in without authority. Such were the circumstances in the cases cited by appellant, but the evidence of the present cases shows quite a different set of circumstances.

In both the Hicks and Brent cases, the appellees testified that their intention was to sign only a contract for the improvement of their homes and of their ignorance of having signed a promissory note. (J.A. 24, 66) The salesman for Consolidated used the "H" Form, which was found by the lower court to have been designed to deceive customers into believing they are signing only a contract, to so deceive the appellees. The salesman discussed the terms of the contract with appellees and through the written contract form and his oral representations as to its contents, led appellees to believe that they were to pay nothing until completion of the work on their property. (J.A. 23, 24, 25, 66, 71 - 73) The District Court found that appellees did not intend to sign a note or deed of trust. (J.A. 79, Brent Finding of Fact No. 11; J.A. 84, Hicks Finding of Fact No. 11)

A writing signed without negligence in ignorance of its nature is void. Though expression of assent and not actual assent creates a contract, a writing purporting to be a contract and not ambiguous in its language may be wholly void. If without negligence on his part, a signer attaches his signature to a paper assuming it to be a paper of a different character, the paper is void. 1 Williston, The Law of Contracts, Rev.

Ed. Sect. 95(a) p. 304. In Britton on Bills and Notes, 1943, Sect. 130, p. 582, the author in discussing fraud in the execution of a negotiable instrument says, "The act of making * * * an instrument in order to constitute (an engagement) to pay may well be regarded as composed of two elements: (1) The physical act of signing, and (2) the knowledge of the required facts, or negligent failure to obtain such knowledge. There must be an assent to be bound otherwise there is no contract, and one does not assent merely by signing his name."

In C.I.T. Corp. v. Panac, 1944, 25 Cal. 2d 547, 154 P. 2d 710, the foregoing language of Williston was quoted with approval by the Supreme Court of California in a case in which a holder in due course sought to enforce payment by the illiterate makers of two promissory notes which were obtained by fraud in the execution. That Court, accepting the finding of lack of negligence of the makers, accordingly ruled that such fraud constitutes a real defense.

In a case with facts somewhat similar to those now before this court, the Supreme Court of Maine in Branz v. Stanley, 1947, 142 Me. 318, 51 A. 2d 192, said, "It is well established in this jurisdiction that if not intending to sign a promissory note she was by fraud and deceit and without negligence on her own part tricked into signing that which afterwards proved to be a note, the instrument is a forgery and void as to all parties."

The Municipal Court of Appeals for this District in Columbia Federal Savings and Loan Association v. Jackson, 1957, 131 A. 2d 404, 407 said, "where one signs a promissory note has been deceived as to the character of the instrument, fraud in the factum or fraud in esse contractus is a real defense, good against even a holder in due course."

In the present cases, appellees' intentions having been only to sign contracts for home improvements and not to sign promissory notes, appellees urge that the foregoing principles apply to the notes held by appellant and that accordingly, the trial court was correct in concluding that said notes are void and unenforceable.

II. APPELLEES WERE NOT NEGLIGENT IN SIGNING THE NOTE AND DEED OF TRUST FORMS

The trial court, after observing and hearing the witnesses and considering the documentary evidence, found that appellees were not negligent in signing the blank notes and deeds of trust. (Brent Finding of Fact No. 12, J.A. 79; Hicks Finding of Fact No. 13, J.A. 84) It further found that appellees have little education (Brent went to the sixth and Hicks to the fourth grade -- Brent Finding No. 10, J.A. 79; Hicks Finding No. 11, J.A. 84), and the use of the deceptive "H" Form without an explanation of its contents is likely to deceive persons of appellees' intelligence, business experience and education. (Brent Finding No. 6, J.A. 78; Hicks Finding No. 7, J.A. 84)

Furthermore, the trial court found the "H" form, which was used by the defendant Consolidated to trick its customers, is a four letter size page paper consisting of two sheets which may be separated along a line of perforations for that purpose; that page one is filled with printing and with headings such as "Credit Application," "Employment or Business," "References," and others. Significantly, a promissory note form appearing on the first page and which is identical to those note forms signed by the appellees, is not headed by any title and is surrounded by perforations for its ready removal from the "H" form. The District Court further found that pages two and three, which the salesmen of Consolidated were instructed not to display, (Brent Finding No. 7, J.A. 78) respectively contain an endorsement form on the rear of the note form and the title "Deed of Trust" with a notarial certificate form, while the fourth page contains an unlabelled deed of trust form in small print. (Brent Finding No. 5, J.A. 78; Hicks Exhibit No. 2 Record).

Appellees believe that this Honorable Court will find on examining the "H" Form (plaintiff Hick's Exhibit No. 2, record) that it is obviously the product of an attempt to conceal the aspects of a promissory note

and deed of trust and that the signatures of persons of the intelligence, experience and education of appellees could easily be procured without their knowledge, particularly when presented in accordance with the instructions of Consolidated to conceal the contents of the form and to volunteer no information concerning it. (J.A. 73) In fact, the Court will find that said form is the same as that described by this Court in Lieberman v. United States, 1958, 102 U.S. App. D.C. 310, 311, 253 F. 2d 46, 47, an appeal by Sam Lieberman, who appeared as a witness in the cases here under consideration as president of defendant Consolidated, (J.A. 43, 44, 46) of his conviction of forgery by trick. At page 312 of 102 U.S. App. D.C. this Court, in disposing of Lieberman's argument that none of the complaining witnesses testified that they had been deceived because they could not explain how their signatures on the note and trust portions of the "H" Form were procured, said, "Here deception is amply proved by the per se deceptive nature of the form involved, and the fact that appellant instructed his salesmen to conceal revealing parts of the form; to decline to volunteer explanations as to the nature of the form, and to obtain the signatures in blank. * * * Perhaps the most that can be said of his present complaint is that his devices were so artful that his customers had no way of being aware of what they signed." (Emphasis supplied)

A similarly deceptive form was considered by the Supreme Court of Minnesota in Stevens v. Pearson, 1917, 138 Min. 72, 163 N.W. 769, which case involved a suit by a holder of a note against the maker, an operator of a small millinery store. The defendant resisted on the ground that her signature on the note was procured through a third person by fraud by his use of a deceptive "order form" which included a detachable note form and by his representations that the defendant would not have to pay for the articles ordered if they were not satisfactory. At page 770 of 163 N.W., the Court said, "As to the alleged negligence of defendant in signing her name to this note, we need only say that we think the average intelligent milliner of small business with this document before

her, complicated and contradictory in its terms, would find difficulty in understanding the legal effect and might easily be led into signing her name, as defendant did, without realizing that she was putting afloat a negotiable promissory note. * * * Caution should be exercised in affording such relief, but we think the evidence in this case is such that the jury might find that defendant was not negligent in signing this note and that she was not bound by it." (Emphasis supplied)

Finally, in the matter of their negligence, appellees invite the Court's attention to the fact that the lower court found that appellees were not negligent in signing the note and deed of trust forms. (J.A. 79, Brent Finding No. 12; J.A. 84, Hicks Finding No. 13) The questions of fraud and negligence are for determination of the trier of the facts in such a case. Columbia Federal Savings and Loan Association v. Jackson, 1957, 131 A. 2d 404, 408. Moreover, such finding should not be set aside unless found to be clearly erroneous, and due regard should be given the trial court's opportunity to judge the credibility of the witnesses.

Respectfully submitted,

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